ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on November 4 and 5, 1992. See **tentative** agenda on pages 1045-1047 in this Administrative Register.

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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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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.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
1 KAR 6:020E

The Capital Planning Advisory Board is directed by KRS Chapter 7A to develop a statewide six-year capital improvement plan. The board is empowered by KRS 7A.140 to promulgate regulations to establish the process and to define the information that will be provided by state agencies and universities and used by the board in the development of the six-year plan. The instructions and forms that define what will be required are incorporated by reference in the administrative regulations. These forms and instructions will be issued to state agencies and universities by October 1, 1992, so the state agencies and universities can provide the required information by the stated deadline of April 15, 1993. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 18, 1992.

REPRESENTATIVE MARSHALL LONG, Chairman

LEGISLATIVE RESEARCH COMMISSION
Capital Planning Advisory Board

1 KAR 6:020E. Policies and procedures.

RELATES TO: KRS Chapter 7A
STATUTORY AUTHORITY: KRS 7A.140
EFFECTIVE: September 18, 1992
NECESSITY AND FUNCTION: KRS 7A.140 authorizes the Capital Planning Advisory Board to adopt any administrative regulations necessary to carry out its planning and advisory functions. The purpose of this administrative regulation is to establish the policies and procedures for the capital planning process.

Section 1. State agencies and institutions of public higher education shall submit information specified by the board in the document entitled "Six-Year Capital Plan Instructions." This document is incorporated by reference and may be reviewed or obtained at the office of the Capital Planning Advisory Board, Room 002, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (ET).

Section 2. Agencies providing information to the Kentucky Information Systems Commission pursuant to KRS 61.950 shall not be required to provide that information directly to the board.

(1) The Kentucky Information Systems Commission shall provide the board with the following information by July 1 of each odd-numbered year:

(a) List and approval or disapproval status of all submitted computing and communications items or systems having capital project status;

(b) List of selected computing and communications items or systems having capital project status on which the Kentucky Information Systems Commission places high value; and

(c) Report of any statewide initiatives involving multiple-agency projects for which the Kentucky Information Systems Commission seeks the support and endorsement of the board.

(2) The board may use the information received from the Kentucky Information Systems Commission in the formulation of the board's statewide six (6) year capital improvements plan.

Section 3. As provided in KRS 164.020(5), the Council on Higher Education shall consider the requirements and review the six (6) year capital plans of the institutions of public higher education. The plans shall be prepared in the manner and submitted by the institutions to the council by dates prescribed by the board. The institutions' individual six (6) year capital plans, along with the council's system capital plan for higher education, shall be submitted to the board by April 15 of each odd-numbered year.

Section 4. the board shall exclude road projects from its information request. Instead, the board will accept, for review only, the Biennial Highway Construction Program developed by the Transportation Cabinet pursuant to KRS Chapters 45 and 48, and the additional four (4) year highway construction plan developed pursuant to KRS Chapter 176.

(1) The Transportation Cabinet shall submit to the board copies of the recommended updates to the most recently enacted Biennial Highway Construction Program and the additional four (4) year highway construction plan by July 15 of each odd-numbered year.

(2) The board may use the information received from the Transportation Cabinet in the formulation of the board's statewide six (6) year capital improvements plan.

Section 5. 1 KAR 6:010, Policies and procedures, is hereby repealed.

REPRESENTATIVE MARSHALL LONG, Chairman
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 18, 1992 at 11 a.m.

STATEMENT OF EMERGENCY
32 KAR 2:020E

The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapters 121 and 121A. It is necessary to promulgate this emergency administrative regulation to establish a procedure for enforcement of the provisions of Senate Bill 221, enacted by the 1992 General Assembly, effective July 14, 1992. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:020E. General provisions.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapters 121 and 121A. The purpose of this administrative regulation is to establish general provisions which shall apply throughout this chapter governing practice and procedure.

Section 1. Definitions. (1) "Chairman" means the Chairman of the Registry of Election Finance.

(2) "Complainant" means any person who files a complaint with the Registry of Election Finance alleging a violation of campaign finance laws or administrative regulations.

(3) "Complaint" means an allegation filed with the Registry of Election Finance charging that a violation of campaign finance statutes or administrative regulations has occurred or is about to occur.

(4) "Conciliation agreement" means an agreement offered by the Registry of Election Finance to an alleged violator of campaign finance laws or administrative regulations as provided in KRS 121.140.

(5) "General counsel" means the general counsel of the Registry of Election Finance.

(6) "Registry" means the Registry of Election Finance.

(7) "Respondent" means any person against whom a complaint has been filed with the Registry of Election Finance or against whom action is taken by the registry based upon information ascertained through its normal enforcement activity.

(8) "Three (3) judge panel" means a panel of three (3) active or retired justices or judges of the Court of Justice appointed by the Chief Justice of the Kentucky Supreme Court to conduct a hearing as provided in KRS 121.140.

Section 2. Scope. This chapter provides procedures for processing possible violations of campaign finance statutes and administrative regulations promulgated by the Registry of Election Finance.

Section 3. Computation of Time. (1) General provision. In computing any period of time prescribed or allowed by this administrative regulation, the provisions of KRS 446.030 shall govern, except as provided in subsection (2) of this section.

(2) Special provision for service by mail. When the registry or any person has the right or is required to do some act within a prescribed period of time after the service of any document by or upon the registry or a person, and the document is served by mail, three (3) days shall be added to the prescribed period.

Section 4. Initiation of Enforcement Matters. Enforcement matters may be initiated by a complaint or on the basis of information ascertained by the registry in the normal course of conducting its enforcement duties.

Section 5. Ex Parte Communications. (1) In order to avoid the possibility of prejudice, real or apparent, in derogation of the public interest in enforcement actions pending before the registry, except to the extent required during an investigation or conciliation negotiations, no interested person outside the agency shall make or cause to be made to any registry member or employee any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any registry member or employee make or entertain such ex parte communication.

(2) This prohibition against ex parte communications shall apply from the time a complaint is filed with the registry or from the time that the registry determines on the basis of information ascertained in the normal course of its duties that it has reason to believe that a violation has occurred or may occur, and shall remain in effect until the registry has concluded all action with respect to the enforcement matter in question.

(3) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any registry employee in the performance of his duties. No statement made by a registry employee during such communication shall bind or estop the registry in any way.

Section 6. Representation by Counsel; Notification. (1) If a respondent wishes to be represented by counsel with regard to any matter pending before the registry, respondent shall so advise the registry by sending a letter of representation signed by the respondent, which shall contain the name, address, and telephone number of the counsel and a statement authorizing such counsel to receive all notifications and other communications from the registry on behalf of the respondent.

(2) Upon receipt of a letter of representation, the registry shall have no contact with respondent except through the designated counsel unless requested in writing by respondent.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:030E

Senate Bill 221, enacted by the 1992 General Assembly, effective July 14, 1992, significantly changed the manner in which the Registry processes complaints and internally-generated matters. It is necessary to promulgate this emergency administrative regulation to enable the Registry to comply with the provisions of Senate Bill 221 and to repeal 32 KAR 2:010 which does not comply with current statutory authority. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:030E. Complaints; internally-generated matters.

RELATES TO: KRS 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish the procedure to be followed by the Registry of Election Finance in processing complaints of alleged violations of campaign finance law or administrative regulations promulgated by the registry. This administrative regulation also repeals 32 KAR 2:010, Processing complaints; hearings because the provisions of that administrative regulation do not comply with the registry's current statutory authority.

Section 1. Filing Requirements. (1) Any person who believes that a violation of any campaign finance statute or administrative regulation may have occurred or is about to occur may file a complaint in writing with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(2) A complaint alleging a violation shall be filed within four (4) years after the alleged violation occurs. If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has ceased, or the date on which the complaint is filed.

(3) A complaint filed with the general counsel shall comply with the following requirements:

(a) The complaint shall provide the full name and address of the complainant.

(b) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be duly notarized.

(c) All statements contained in the complaint shall be made under penalty of perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint shall clearly identify as a respondent each person or entity who is alleged to have committed a violation or is about to commit a violation.

(e) Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of the statements contained in the complaint.

(f) The complaint shall contain a clear and concise recitation of the facts which support the allegation of a violation of a campaign finance statute or administrative regulation.

(g) The complaint shall be accompanied by any documentation supporting the allegations if such documentation is known by and available to the complainant.

Section 2. Initial Complaint Processing; Notification. (1) Upon receipt of a complaint, the general counsel shall review the complaint for substantial compliance with the technical requirements of Section 1 of this administrative regulation. If the complaint complies with those requirements, the general counsel shall, within five (5) days after receipt of the complaint, notify each respondent that the complaint has been filed, advise them of registry procedures, and enclose a copy of the complaint and supporting documentation.

(2) If a complaint fails to comply with the requirements of Section 1 of this administrative regulation, the general counsel shall notify the complainant and person or entity identified as respondents, within the five (5) day period specified in subsection (1) of this section, that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent. The notification shall include an explanation of the reasons the complaint fails to comply.

Section 3. Opportunity to Demonstrate that no Action Should be Taken on Complaint-Generated Matters. (1) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the registry should take no action.

(2) The registry shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered such response or unless no response has been served upon the registry within the fifteen (15) day period prescribed in subsection (1) of this section.

Section 4. Reason to Believe Finding. (1) Following either the expiration of the fifteen (15) day period prescribed by Section 3 of this administrative regulation, or receipt of a response from the respondent, whichever occurs first, the general counsel shall determine whether there is reason to believe that a respondent may have violated or is about to violate a campaign statute or administrative regulation.

(2) If the general counsel determines that there is reason to believe that a violation may have occurred or is about to occur, an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(3) If the general counsel determines that there is no reason to believe that a violation may have occurred or is about to occur, he shall recommend to the registry that the complaint be dismissed. The registry shall determine whether to accept or reject the general counsel's recommendation.

Section 5. Referrals. (1) On the basis of information ascertained by the registry in the normal course of performing its enforcement duties, or on the basis or referral from an agency of the United States or of any state, the general counsel may find reason to believe that a person or entity may have committed or is about to commit a violation of campaign finance statutes or administrative regulations, and an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(2) If the general counsel finds reason to believe that a violation may have occurred or is about to occur, the notification to the respondent required by Section 2 of this administrative regulation shall include a copy of a staff report setting forth the legal basis for and the alleged facts which support the general counsel's finding.

(3) Prior to taking action against any person who has failed to file a disclosure report required by KRS 121.180(3)(a) for the calendar quarter immediately preceding the election involved or by KRS 61.740, the registry shall notify such person of failure to file the required reports. If a satisfactory response is not received within four (4) business days, the registry shall publish before the election the name of the person and the report or reports such person has failed to file.

Section 6. Reopening of Proceedings. After a hearing and the issuance of a final order, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all parties and intervenors, and may take the action it deems necessary.

Section 7. Certification. The chairman or the executive director may certify all documents or records which are a part of the files of the registry.

Section 8. Construction; Harmless Error. (1) These administrative regulations shall be liberally construed to effectuate the purposes and provisions of KRS Chapters 121 and 121A, and the policies of the Kentucky Registry of Election Finance.

(2) All pleadings shall be liberally construed with a view to effect justice, and the registry shall, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not substantially affect the rights of the parties.

Section 9. 32 KAR 2:010, Processing complaints; hearings, is hereby repealed.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:040E

The 1992 General Assembly enacted sweeping changes in the manner in which the Registry of Election Finance processes alleged violations of campaign finance laws. These changes became effective July 14, 1992. It is necessary to promulgate this emergency administrative regulation to establish a procedure for processing alleged violations preceding conciliation negotiations. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:040E. Preconciliation procedures.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a procedure for processing complaints or internally-generated matters prior to the conciliation process established by Senate Bill 221 enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.

Section 1. Reason to Believe Finding. (1) If the general counsel, either after reviewing a complaint and any response of a respondent submitted pursuant to Section 3 of 32 KAR 2:030, or after reviewing an internally-generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.

(2) If the general counsel finds no reason to believe that a violation occurred or otherwise terminates its proceedings, the general counsel shall so advise both the complainant and respondent by letter.

Section 2. Investigations. (1) An investigation shall be conducted in any case in which the general counsel finds reason to believe that a violation of a campaign finance statute or administrative regulation may have occurred or is about to occur, or at the direction of the registry if the general counsel's recommendation of dismissal is rejected.

(2) In its investigation, the registry may utilize the provisions of Sections 3 to 7 of this administrative regulation. The investigation may include, but shall not be limited to, field investigations, audits, and other methods of information gathering.

Section 3. Written Question Under Oath. The registry may authorize its chairman or general counsel to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which the answers shall be submitted.

Section 4. Subpoenas; Depositions. (1) The registry may authorize its chairman or general counsel to issue subpoenas requiring the attendance and testimony of any person by deposition or at a hearing. Further the registry may issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with an investigation, deposition, or a hearing.

(2) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be given under oath. A deposition may be taken before any person having the power to administer oaths.

(3) The Kentucky Rules of Civil Procedure, Rule 30.05, shall govern the opportunity to review and sign depositions taken pursuant to this section.

Section 5. Service of Subpoenas, Orders, and Notifications. (1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by this section. In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.

(2) When service is to be made upon a person who has advised the registry of representation by an attorney, the service shall be made upon the attorney by any of the methods specified in subsection (3) of this section and a copy shall be sent to the individual.

(3) Delivery of subpoenas, orders, and notifications to a natural person may be made by handing a copy to the person, by leaving a copy at his dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his last known address, or by any other method whereby actual notice is given. When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to the representative at his last known address, or by any other method by which actual notice is given.

Section 6. Witness Fees and Mileage. (1) Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the Commonwealth of Kentucky. These fees may be tendered at the time the witness appears for the deposition or within a reasonable time thereafter.

Section 7. Motions to Quash or Modify a Subpoena. (1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no later than five (5) days after the date of receipt of the subpoena, move the registry to quash or modify the subpoena, accompanying the motion with a brief statement of the reasons therefore. Motions to quash shall be filed with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Three (3) copies shall be submitted.

(2) The registry may deny the motion, quash the subpoena, or modify the subpoena.

(3) The person subpoenaed and the general counsel may agree to change the date, time, or place of a deposition or the conditions for the production of documents without affecting the force and effect of the subpoena, but any modifications shall be confirmed in writing.

Section 8. Briefing Procedures. (1) Upon completion of the investigation, the general counsel shall make a report of the findings of the registry. If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case. The registry may also request the respondent to appear to present additional information, or the respondent may request that he be allowed to present additional evidence. The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

(2) The general counsel shall provide a copy of his brief to the respondent who may, within fifteen (15) days of receipt of the general counsel's brief, file a brief with the registry setting forth his position on the factual and legal issue of the case. Ten (10) copies of the brief shall be filed with the executive director and three (3) copies shall be filed with the general counsel.

Section 9. Probable Cause Finding; Notification. (1) If the registry determines that there is probable cause to believe that a respondent may have or is about to violate a campaign finance statute or administrative regulation, the general counsel shall notify the respondent and complainant by letter.

(2) If the registry finds no probable cause or otherwise orders a termination of its proceedings, the general counsel shall notify respondent and complainant by letter.

Section 10. Noncompliance with Reporting Requirements; Probable Cause Determination. (1) If any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section, such failure to file a report due in a timely manner shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the respondent. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to file any report required under the campaign finance laws.

(2) A conciliation agreement reached pursuant to this section shall not be binding upon either party until it is signed by the respondent, the general counsel and the executive director, and approved by the registry.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:050E

The 1992 General Assembly amended KRS 121.140 to establish a conciliation procedure as part of the enforcement duties of the Registry of Election Finance. This provision became effective July 14, 1992. It is necessary to promulgate this emergency administrative regulation to enable the Registry to comply with KRS 121.140 as amended. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:050E. Conciliation.

RELATES TO: KRS 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with Senate Bill 221, which became effective July 14, 1992.

Section 1. Negotiations. (1) Upon a registry finding of probable cause, the general counsel and executive director shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(2) A conciliation agreement shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director and approved by the registry.

(3) If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(4) If a conciliation agreement is reached between the registry and the respondent, the general counsel shall send a copy of the signed agreement to both complainant and respondent.

Section 2. Public Disclosure of Registry Action. (1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(2) If a conciliation agreement is finalized, the registry shall make the agreement public forthwith.

(3) Except as provided in subsections (1) and (2) of this section, no complaint filed with the registry, nor any notification sent by the registry, nor any investigation conducted by the registry, nor any findings made by the registry shall be made public by the registry or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(4) Except as provided in subsections (1) and (2) of this section, no action by the registry or by any person, and no information derived in connection with conciliation efforts may be made public by the registry until a final action with regard to a conciliation attempt is taken.

(5) Nothing in this administrative regulation shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:060E

KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance laws or administrative regulation promulgated by the Registry pursuant to statutory authority. This provision became effective July 14, 1992, and it is necessary to promulgate this emergency administrative regulation to establish the procedure through which opinions may be requested and issued. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:060E. Advisory opinions.

RELATES TO: KRS 121.135
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance laws or administrative regulations promulgated by the registry pursuant to statutory authority. These provisions became effective July 14, 1992, and this administrative regulation is necessary to implement the process through which advisory opinions may be requested and issued.

Section 1. Requests for Advisory Opinions. (1) Any person may request in writing an advisory opinion concerning the application of campaign finance statutes or administrative regulations with regard to a particular transaction. An authorized agent of the person requesting

an advisory opinion may submit the advisory opinion request, but the agent shall disclose the identity of his principal.

(2) The written advisory opinion request shall describe a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, shall not be considered.

(3) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(4) The office of general counsel shall review all requests for advisory opinions submitted to the registry. If the office of general counsel determines that a request is incomplete or otherwise fails to meet the criteria established in this section, it shall, within ten (10) calendar days of receipt of the request, notify the requesting person, of any deficiencies in the request.

(5) Advisory opinion requests shall be submitted to the Office of the General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(6) Upon receipt by the registry, each request which qualifies as an advisory opinion request (AOR) under this section shall be assigned an AOR number for reference purposes.

Section 2. Public Availability of Requests. (1) Advisory opinion requests which qualify under Section 1 of this administrative regulation shall be made public at the registry promptly upon receipt. A register shall be maintained by the registry containing a list of requests for advisory opinions and shall be updated on a regular basis. The register, copies of all requests for advisory opinions, supplemental materials, and copies of all opinions issued shall be available for public inspection at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time.

Section 3. Written Comments on Request. (1) Any interested person may submit comments concerning requests for advisory opinions made public by the registry. All comments shall be in writing and shall refer to the AOR number of the request.

(2) Written comments shall be submitted not later than ten (10) calendar days following the date the request is made public by the registry. If the tenth day falls on a Saturday, Sunday, or legal holiday, the ten (10) day period shall expire at the close of the business day next following.

(3) Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted in the discretion of the Office of General Counsel without a request.

(4) Written comments and requests for additional time to comment shall be sent to the Office of General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601.

(5) Before issuing an advisory opinion, the registry shall accept and consider all written comments submitted within the ten (10) day comment period or any extension of the normal comment period.

Section 4. Issuance of Advisory Opinions. (1) Within thirty (30) calendar days after receiving an advisory opinion request that qualifies as a valid request under Section 1 of this administrative regulation, the Office of General Counsel shall issue to the requesting party a written advisory opinion.

(2) The thirty (30) day period provided in subsection (1) of this section shall be reduced to twenty (20) calendar days for an advisory opinion request is submitted by a candidate, slate of candidates, or either of their campaign committees during the thirty (30) days preceding the date of an election as provided in KRS 121.135(2).

(3) Each advisory opinion or other registry response to a request for an advisory opinion shall be made public as provided in Section 3 of this administrative regulation and shall be delivered by mail or personally delivered to the person who requested the opinion.

Section 5. Reliance on Advisory Opinions. An advisory opinion issued by the registry may be relied upon only as provided in KRS 121.135(4).

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:070E

KRS 121.170(2) and 121A.020(5) require persons who directly solicit and secure contributions for a candidate or slate of candidates in excess of $3,000 in an election to register as a fundraiser with the Registry of Election Finance. These provisions became effective July 14, 1992, and it is necessary to promulgate this emergency administrative regulation to enable the Registry to establish the necessary procedure to comply with the requirements of KRS 121.170(2) and 121A.020(5). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:070E. Fundraiser registration.

RELATES TO: KRS 121.170(2), 121A.020(5)
STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.020(7)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: KRS 121.170(2) and 121A.020(5) require persons who directly solicit and secure contributions for a candidate or slate of candidates in excess of $3,000 in an election to register as a fundraiser with the Registry of Election Finance. The purpose of this administrative regulation is to establish the procedure through which persons qualifying as fundraisers shall register with and report to the Registry of Election Finance.

Section 1. Definitions. As used in this administrative regulation, "fundraiser" shall have the meaning prescribed in KRS 121.015(11).

Section 2. Fundraiser Registration Procedure; Exemptions. (1) Any person who qualifies as a fundraiser as defined in KRS 121.015(11) or 121A.020(5) shall register with the registry immediately upon securing contributions for a candidate or slate of candidates in excess of $3,000 in an election. A fundraiser shall register by filing form KREF 92-019 (Fundraiser Registration) with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. A registered fundraiser shall comply with applicable reporting requirement as provided in KRS 121.170(2).

(2) As part of the packet of forms and instructions regularly provided to candidates by the registry, each candidate or slate of candidates shall receive all necessary forms and instructions for complying with applicable reporting requirements. It shall be the duty of the candidate, slate of candidates, or the appropriate campaign treasurer to provide the forms and reporting instructions to each person who qualifies as a fundraiser for the candidate or slate of candidates.

(3) For purposes of this administrative regulation, the following

activities shall not qualify a person as a fundraiser:

(a) Serving as treasurer of a campaign committee;

(b) Performing clerical duties such as receiving contributions or preparing and filing campaign finance reports;

(c) Communicating an endorsement of a candidate or slate of candidates which indirectly results in the receipt of contributions, provided that the communication is not followed by one-on-one direct oral or written solicitation of contributions by the person making the endorsement; or

(d) Acting as host of a social event at one's residence or place of business, provided that the host does not directly solicit and secure contributions in excess of $3,000.

Section 3. Material Incorporated by Reference. Forms KREF 92-019 (Fundraiser Registration), effective 8/92 and KREF 92-020 (Fundraiser Report), effective 8/92, are hereby incorporated by reference. These forms may be obtained from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time, and are on file with the Regulations Compiler, Legislative Research Commission, State Capitol.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
32 KAR 2:080E

KRS 121.120(5) provides that members of the Registry of Election Finance and its employees "shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations". This provision became effective July 14, 1992. It is necessary to promulgate this emergency administrative regulation to establish the necessary guidelines for Registry members and employees. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 6, 1992.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:080E. Political activities of registry members and employees.

RELATES TO: KRS 121.120(5)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE: October 6, 1992
NECESSITY AND FUNCTION: KRS 121.120(5) provides that registry members and employees "shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations". The purpose of this administrative regulation is to establish guidelines to govern the political activities of registry members and employees.

Section 1. To ensure the fair and efficient enforcement of campaign finance laws and administrative regulations, no registry member or employee shall engage in any activity which creates the appearance of bias or predisposition with regard to any person, political party, candidate, or committee, or as to any matter subject to registry action. No registry member or employee shall serve as a member of any committee of a political party, or as an officer or member of a committee of a partisan political club, nor shall a registry member or employee serve on a campaign committee or otherwise participate in the management or affairs of any political party or campaign. However, this regulation shall not be construed to restrict the right of a registry member or employee to exercise his rights as a citizen to privately express his political views or to vote in any election.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:220E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states which 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 weeks before the opening dates of the hunting season. An ordinary administrative regulation will not suffice because of insufficient time to accomplish the required state procedures during the short period between promulgation of federal hunting regulations and the opening of the hunting season will preclude timely effectiveness of the administrative regulation. The 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
(Proposed Amendment)

301 KAR 2:220E. 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
EFFECTIVE: September 22, 1992
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 [~~geese~~] 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 [~~geese~~] 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 [~~geese~~] 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 Record-keeping 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 [~~geese~~] 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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
500 KAR 10:001E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because this regulation will immediately put in place grant programs for which funds are already allocated and the programs will divert offenders from state prisons thus saving the Commonwealth a substantial amount in costs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on September 15, 1992, in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET
Department of Corrections

500 KAR 10:001E. Definitions.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
500 KAR 10:010E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because this regulation will immediately put in place grant programs for which funds are already allocated and the programs will divert offenders from state prisons thus saving the Commonwealth a substantial amount in costs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on September 15, 1992, in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET
Department of Corrections

500 KAR 10:010E. Authority, purpose, name of grant program.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
500 KAR 10:020E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because this regulation will immediately put in place grant programs for which funds are already allocated and the programs will divert offenders from state prisons thus saving the Commonwealth a substantial amount in costs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on September 15, 1992, in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET
Department of Corrections

500 KAR 10:020E. Administration and application procedure for community corrections grant program.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
500 KAR 10:030E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because this regulation will immediately put in place grant programs for which funds are already allocated and the programs will divert offenders from state prisons thus saving the Commonwealth a substantial amount in costs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on September 15, 1992, in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET
Department of Corrections

500 KAR 10:030E. Community corrections board.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
500 KAR 10:040E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because this regulation will immediately put in place grant programs for which funds are already allocated and the programs will divert offenders from state prisons thus saving the Commonwealth a substantial amount in costs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on September 15, 1992, in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET
Department of Corrections

500 KAR 10:040E. Annual review for compliance.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
704 KAR 3:405E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary in order to establish and implement a superintendent training and assessment center for local school district superintendents. KRS 156.111 requires the implementation of an assessment process and training modules. These must be implemented immediately to ensure the application of the statute's provision that states, "A person hired for the first time as superintendent in Kentucky after July 1, 1992, shall successfully complete the assessment center process within one (1) year of assuming his duties as superintendent." This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the LRC.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

BUREAU FOR LEARNING SUPPORT SERVICES
Department of Education
Office of Learning Programs Development

704 KAR 3:405E. Superintendent training program and assessment process.

RELATES TO: KRS 156.111, 160.350
STATUTORY AUTHORITY: KRS 156.111
EFFECTIVE: September 22, 1992
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 22, 1992 at 10 a.m.

REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

DEPARTMENT OF LAW
Division of Consumer Protection
(As Amended)

40 KAR 2:001. Definitions.

RELATES TO: KRS 367.461, 367.463, 367.465, 367.467, 367.469

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.469

NECESSITY AND FUNCTION: To define terms related to the application for use and permitting use of automated calling equipment in the Commonwealth of Kentucky.

Section 1. In addition to the definitions in KRS 367.461, 367.465 and unless the context otherwise requires:

(1) "Utilizing" means making direct or indirect use of automated calling equipment in any trade or commerce.

(2) "Alternate form of **surety** [~~security~~]" means a financial or commercial transaction which provides [~~substantially~~] the same level of certainty of financial responsibility as a surety bond drawn by a surety company authorized to do business in the Commonwealth of Kentucky in the event of insolvency, bankruptcy, or unavailability of the applicant and related parties to meet claims for restitution losses or civil penalties for violations of KRS Chapter 367.

(3) "Applicant" means any natural person, corporation, company, partnership, or other legal entity seeking a permit to use automated calling equipment in the Commonwealth of Kentucky.

(4) "Permittee" means any holder of a duly issued permit to use automated calling equipment in the Commonwealth of Kentucky.

(5) "Address" means the permanent location at which legal documents are received by an applicant or permittee.

(6) "Name" means a combination of words used by a person, corporation, company, partnership, or other legal entity within the past sixty (60) months as a means of identification.

(7) "Designated agent" means an agent for service of process of legal documents.

(8) "Financial responsibility" means a surety bond by a surety company authorized to do business in the Commonwealth of Kentucky or **an alternate form of surety approved by the Attorney General** [~~the functional equivalent thereof~~] in the event of insolvency, bankruptcy, or unavailability of the applicants or permittees to address consumer complaints, claims for restitution, or civil penalties for alleged violation of KRS Chapter 367.

CHRIS GORMAN, Attorney General
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

DEPARTMENT OF LAW
Division of Consumer Protection
(As Amended)

40 KAR 2:040. Issuance of permit to use automated calling equipment.

RELATES TO: KRS 367.461, 367.463, 367.465, 367.467, 367.469

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.469

NECESSITY AND FUNCTION: Sets forth the basis for issuance of permit to use automated calling equipment in the Commonwealth of Kentucky.

Section 1. **(1) An "Application Form for Permit to Use Automated Dialing Equipment" shall be filed with the Office of the Attorney General.**

(2) The Office of the Attorney General may verify the information contained in an application.

(3) An application that contains false or incomplete statements shall be denied. [~~The following principals and procedures shall govern all applications for permits to use automated calling equipment in the Commonwealth of Kentucky.~~

~~(1) Application shall be made to the Office of the Attorney General on forms provided by that office.~~

~~(2) Answers to all information requirements and applications shall be signed, complete and comprehensive.~~

~~(3) The Office of the Attorney General may conduct investigations as to the correctness of information submitted upon application, and may deny a permit for any false or incomplete statement on such application.~~]

Section 2. **(1)** The surety bond required by KRS 367.469 shall be in favor of the Attorney General's Division of Consumer Protection.

(2) It [~~and~~] shall be held for compensation to consumers **if an applicant or permittee:**

(a) Becomes insolvent or bankrupt; or

(b) Is unavailable, unable, or unwilling to:

1. Address consumer complaints; or

2. Satisfy claims for restitution or civil penalties under the provisions of KRS Chapter 367. [~~in the event of insolvency, bankruptcy, or unavailability of the applicants or permittees to address consumer complaints, claims for restitution or civil penalties for alleged violation of KRS Chapter 367.~~]

Section 3. **Issuance, Renewal of Permit. (1) A permit shall be issued if:**

(a) An applicant has filed an "Application Form for Permit to Use Automated Dialing Equipment" with the Office of the Attorney General;

(b) The application form contains the required information; and

(c) The Office of the Attorney General has verified that the requirements of KRS Chapter 367 have been met.

(2) A permit shall be valid for one (1) year.

(3) A request for renewal of a permit shall be:

(a) Made on the "Application Form for Permit to Use Automated Dialing Equipment"; and

(b) Subject to the same conditions as an initial application for a permit. [~~The following practice and procedure shall govern issuance of permits to use automated calling equipment in the Commonwealth of Kentucky.~~

~~(1) Permits for use of automated calling equipment shall be valid for one (1) year.~~

~~(2) Upon complete execution of the application, proof of financial responsibility, and verification by the Office of the Attorney General that the requirements of KRS 367.461, 367.463, 367.465, 367.467 and 367.469 have been fully met, a permit shall be issued.~~

~~(3) Any change in the information submitted in a permit shall be immediately communicated to the Office of the Attorney General by the permittee.~~

~~(4) Permittees shall apply for a reissuance of a permit upon the same form and under the same conditions as an initial application and upon verification by the Attorney General of full and complete answers to all information required, a permit shall reissue annually.~~

~~(5) The Attorney General may revoke any permit upon a finding of violation of KRS 367.461, 367.463 or 367.465.~~]

Section 4. Revocation of Permit. The Attorney General may

revoke a permit if he determines that the permittee has violated KRS Chapter 367.

Section 5. Incorporation by Reference. (1) "Application Form for Permit to Use Automated Dialing Equipment (1992)" is incorporated by reference.

(2) This form may be inspected, copied or obtained at the Office of the Attorney General, Consumer Protection Division, 209 St. Clair Street, Frankfort, Kentucky 40601-1875, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRIS GORMAN, Attorney General
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

DEPARTMENT OF LAW
Division of Consumer Protection
(As Amended)

40 KAR 2:050. Hearing procedures ~~[for a hearing]~~.

RELATES TO: KRS 367.461, 367.463, 367.465, 367.467, 367.469

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.469

NECESSITY AND FUNCTION: This regulation establishes the procedures for conducting a hearing by the Office of the Attorney General to revoke a permit to use automated dialing equipment in the Commonwealth of Kentucky.

Section 1. **Hearings related to denials of applications or revocations of permits shall be governed by the provisions of this administrative regulation.** ~~[The purpose of this regulation is to enable the Office of the Attorney General to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the permittee. Accordingly, this regulation shall be liberally construed to aid in that process.]~~

Section 2. **Denial and** revocation actions **shall** ~~[will]~~ be heard by:

(1) An Assistant Attorney General; or

(2) A hearing examiner employed by the Department of Law **as a** ~~[in the capacity of]~~ hearing officer.

Section 3. **An applicant or** ~~[The]~~ permittee shall have the right to:

(1) Be present;

(2) ~~[and to]~~ Be heard at the hearing;

(3) ~~[, to]~~ Be represented by legal counsel;

(4) ~~[, to]~~ Present evidence;

(5) ~~[, to]~~ Cross-examine witnesses presented by the attorney prosecuting the matter before the hearing officer; and

(6) ~~[to]~~ Make both opening and closing statements.

Section 4. Prehearing Disclosure of Evidence. (1) **A permittee shall have the right to:**

(a) Inspect the investigative file relating to a revocation action;

(b) Represent himself, or be represented by counsel; and

(c) Inspect tangible evidence in the possession of the hearing officer or the department.

(2) An appointment for examination of a file or other evidence shall be made:

(a) Upon reasonable notice;

(b) During and for regular office hours; and

(c) For a time convenient to all parties.

(3) At least ten (10) days prior to the scheduled hearing date, the permittee shall furnish to the Office of the Attorney General:

(a) Copies of documents he intends to introduce; and

(b) Produce for inspection tangible evidence within his possession or control that he intends to introduce.

(4) Upon timely written notice, he shall produce such other information requested by the hearing officer. ~~[The permittee shall have the right to inspect the investigative file relating to a revocation action which is to be the subject of the hearing either in person or by legal counsel. The licensee, certificate holder, or applicant shall have the right to such other information as the hearing officer deems appropriate within ten (10) days of the hearing. Nothing in this section shall be construed as giving the permittee the right to examine or copy the personal notes, observations, conclusions, or work product of legal counsel prosecuting the allegations of the complaint. An appointment for the examination of an investigative file must be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The licensee, certificate holder, or applicant shall be allowed to examine any items of tangible evidence in the possession of the hearing officer.~~

~~(2) At least ten (10) days prior to the scheduled hearing date the permittee shall furnish to the investigator or legal counsel prosecuting the allegations of the complaint copies of any documents which the licensee, certificate holder, or applicant intends to introduce at the hearing, and such other information as the hearing officer deems appropriate. The permittee shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.~~]

(5)(a) ~~[(3)]~~ At least ten (10) days prior to the scheduled hearing date the permittee shall file with the hearing officer a written response to the specific allegations contained in the notice of charges.

(b) The hearing officer may for good cause permit the late filing of a response.

(6)(a) ~~[(4)]~~ After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence which may come to its attention. Such additional disclosure shall take place as soon as practicable.

(b) Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer **shall** ~~[will]~~ call the meeting to order and **shall** ~~[will]~~ identify the parties to the action and the persons present. The hearing officer **shall** ~~[will]~~ rule upon any objections or motions. Opening statements **shall** ~~[will]~~ be made, with the attorney prosecuting the allegations of the complaint proceeding first. Either side may waive opening statement.

(2) The taking of proof **shall** ~~[will]~~ commence with the calling of witnesses on behalf of the attorney prosecuting the matter before the hearing officer. ~~[Such]~~ Witnesses **shall** ~~[will]~~ be examined first by the attorney prosecuting the allegations of the complaint, then by the permittee or that person's attorney, and finally by the hearing officer. Rebuttal examination of witnesses **shall** ~~[will]~~ proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the attorney prosecuting the matter before the hearing officer, the permittee **shall** ~~[will]~~ call its witnesses. ~~[Such]~~ Witnesses **shall** ~~[will]~~ be examined first by the permittee or that person's attorney, then by the attorney prosecuting the allegations of the complaint, and finally by the hearing officer. Rebuttal examination of those witnesses **shall** ~~[will]~~ proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) The hearing officer **shall** ~~[will]~~ be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the complaint.

Section 6. **Evidence. (1) Formal rules of evidence shall not apply.**

(2) A hearing officer shall exclude evidence that is:
(a) Irrelevant;
(b) Immaterial;
(c) Unduly repetitious; or
(d) Excludable on:
1. Constitutional or statutory grounds; or
2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.
(3) Testimony or other evidence shall be admitted if it is:
(a) Based on facts; and
(b) Commonly relied upon by reasonably prudent persons.
(4)(a) Evidence shall not be excluded solely because it is hearsay.
(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.
(5) A hearing officer may admit party or witness testimony taken by deposition if:
(a) A party or witness is unable to attend through no fault of his own; and
(b) The opposing party has had a full opportunity to cross-examine the party or witness.
(6) Evidence may be received in written form if it will:
(a) Expedite the hearing; and
(b) Not substantially prejudice the interests of a party.
(7)(a) A copy or an excerpt of documentary evidence may be received.
(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.
(8) Official notice shall be taken of:
(a) A fact that would be judicially noticed in the courts of the Commonwealth;
(b) The record of other proceedings before the Office of the Attorney General;
(c) Technical or scientific matters within the specialized knowledge of the Office of the Attorney General;
(d) Pursuant to the provisions of KRS Chapter 13A, codes or standards that have been adopted by:
1. An agency of the United States, the Commonwealth, or another state; or
2. A nationally recognized organization or association.
(9) Tangible items may be received into evidence the hearing officer is satisfied that the item is:
(a) What it is represented to be; and
(b) In substantially the same condition as it was at the time of the events under consideration. [~~Rules of Evidence. (1) The hearing officer shall not be bound by the technical rules of evidence. The hearing officer may receive any evidence which he or she considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the hearing officer is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.~~

~~(2) The hearing officer retains the discretion to exclude any evidence which he or she considers to be unreliable, incompetent, irrelevant, immaterial, or unduly repetitious. Rulings on objections to evidence will be made by the hearing officer.~~]

Section 7. (1) Upon the conclusion of the hearing, the hearing officer shall [~~will~~] render a decision in writing with copies to all parties.
(2)(a) The decision of the hearing officer shall be reviewed by the Attorney General.
(b) The Attorney General shall:
1. Approve the decision; or
2. Modify the decision; or
3. Remand to the hearing officer for further action.

CHRIS GORMAN, Attorney General
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

DEPARTMENT OF LAW
(As Amended)

40 KAR 2:060. Business opportunities.

RELATES TO: KRS 367.801-367.819 [~~(6)~~]
STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.803
NECESSITY AND FUNCTION: KRS 367.803 grants the Attorney General the authority to add distribution devices to those specified in KRS 367.801(6). This administrative regulation adds various distribution devices to the list found in KRS 367.801(6). [~~To ensure that business opportunities offerings receive scrutiny which is legislatively intended in KRS 367.801 et seq. through a comprehensive coverage of distribution devices.~~]

Section 1. The term "distribution device" as used in KRS 367.801 et seq. shall, in addition to those set forth in KRS 367.801(6), also include the following:
(1) Pay phones;
(2) Fire extinguishers;
(3) Computer software;
(4) Discounted services for programs featuring:
(a) Travel;
(b) Telephone;
(c) Cosmetics club;
(d) Home furnishings; and
(e) Dental plan; and [~~including but not limited to travel, telephone, cosmetics club, home furnishings, and dental plan;~~]
(5) Any other product, equipment, supplies or services or any combination by which a promoter or its affiliate disposes of or attempts to dispose of goods or services to a consumer to enable the consumer to begin a business.

CHRIS GORMAN, Attorney General
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

STATE INVESTMENT COMMISSION
(As Amended)

200 KAR 14:011. General rules.

RELATES TO: KRS Chapter 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525 provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This administrative regulation establishes the standards that govern the Commonwealth's investment and cash management programs. [~~general rules which apply to the investment of state funds.~~]

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means the State Investment Commission; and
(2) "Office" means the Office of Financial Management and Economic Analysis.

[~~Section 2. General. The purpose of this regulation is to provide standard rules that will govern the Commonwealth's investment and~~

~~cash management programs.~~]

Section 2. [~~3.~~] Goals of Investments. The goals of all investments of the Commonwealth **shall be** [~~are~~] to:

(1) Insure safety of principal. The commission shall not allow the investment of state funds in any institution or instrument which it deems unsafe and a threat to the security of those funds.

(2) Maintain adequate liquidity to meet the cash needs of the Commonwealth. [~~The commission is charged with the duty of determining the Commonwealth's liquidity needs pursuant to KRS 42.410. In light of this responsibility,~~] The office shall not execute nor allow the execution of any investment that will negatively impact the short or long-term cash needs of the Commonwealth.

(3) Maximize yield. The commission shall invest in securities which maximize yield or return to the Commonwealth within the safety and liquidity constraints set out by the commission.

Section 3. [~~4.~~] Monies to be Invested. The commission shall invest all state funds as defined in KRS 446.010(31) which are excess, surplus, or otherwise available for investment for periods of time of one (1) day or more.

Section 4. [~~5.~~] Minimum Interest Rates. (1) The amount of funds per investment instrument **shall** [~~will~~] be determined periodically by the commission at its regular public meetings. Criteria to determine such amounts **shall be** [~~are~~]:

(a) Liquidity needs of the various state agencies for which funds are budgeted; and

(b) Rates available per instrument, and safety of principal and interest.

(2) Investment instruments **shall** [~~will~~] be qualified as available for use by being:

(a) Specified as such in statute; and

(b) Further qualified under the provisions of 200 KAR 14:081, 200 KAR 14:091 [~~and other administrative regulations as promulgated by the commission~~].

(3) The commission shall not allow the investment of state funds in any institution or instrument for a term of one (1) year or less at a yield less than the yield available on Treasury Bills of similar maturity. For funds to be invested for more than one (1) year, the commission shall not allow investment in any institution or instrument at a yield less than the yield available on Treasury Notes of similar maturity.

Section 5. [~~6.~~] Acceptable Maturity of Investments. The maturity of investments made by the commission shall be subject to the liquidity needs of the Commonwealth as determined by the commission.

Section 6. [~~7.~~] In-state and Out-of-state Deposits. All funds eligible for investment in certificates of deposit as determined by the commission shall first be offered to financial institutions chartered in Kentucky or by the United States that have their main office located in Kentucky. The rate at which these funds **shall** [~~will~~] be offered shall be set by the commission as set out in KRS Chapter 42. **If** [~~Should~~] Kentucky financial institutions eligible for these funds refuse any part of the funds offered, the commission may offer the funds to any commercial bank chartered in the United States, approved by the commission. Any out-of-state investments shall be subject to the same collateralization requirements as in-state investments.

Section 7. [~~8.~~] Distribution of Funds Among Types of Institutions. Distribution of funds among types of institutions **shall** [~~will~~] be determined from time to time by the commission at its regular public meetings. The criteria for that distribution **shall** [~~will~~] be:

(1) The institution is permitted by statute to qualify as a depository;

(2) Rates available;

(3) Sufficiency of collateral; and

(4) Determination as to whether institutions are meeting the economic development needs of the community.

BRERETON C. JONES, Chairman
APPROVED BY AGENCY: July 6, 1992
FILED WITH LRC: July 14, 1992 at 4 p.m.

STATE INVESTMENT COMMISSION
(As Amended)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS Chapters 41, 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525 provides that the State Investment Commission shall prescribe **standards** [~~rules~~] for the operation of the state's investment program. This **administrative** regulation establishes the general **standards** [~~rules~~] which shall apply to the employment of repurchase agreements as investment vehicles with commercial banks or savings and loan associations chartered by the Commonwealth of Kentucky or by an agency of the United States government to do business in Kentucky, providing the main office is in Kentucky; or investment banking firms approved by the State Investment Commission at its open regular meetings.

Section 1. Definitions. For purposes of this regulation:

(1) "Commission" means the State Investment Commission;

(2) "Office" means the Office of Financial Management and Economic Analysis;

(3) "Repurchase agreement" means an actual, conditional purchase of securities of the United States Treasury, any agency instrumentality or corporation of the United States, or any other security authorized for investment pursuant to KRS 42.500(6), with an agreement to resell the securities to their original owner on a specific date in the future.

[~~Section 2. General. The use of repurchase agreements as a vehicle by which to channel state investable funds into commercial banks and savings and loan associations provides distinct advantages to both parties. The banks and savings and loan associations do not have to post reserves against these funds in that they are not defined as deposits by their regulatory agencies. Secondly, they do not have to bear increased premiums for deposit insurance. The result is that the state may receive a higher yield for its investment. Further, repurchase agreements, in general, provide the maximum available yield to the state's portfolio of the alternatives statutorily available to the commission in managing short term funds.~~

~~Section 3. Monies to be Invested. The commission shall invest all public funds as defined by KRS 446.010(31). The office shall execute all investments on behalf of the commission. All such investments shall be executed in accordance with the investment policies duly adopted by the commission.~~]

Section 2. [~~4.~~] Minimum Interest Rates. The commission shall not allow public funds to be invested in any repurchase agreement with a yield less than could be received on any directly purchased United States Treasury security of a comparable maturity.

Section 3. [~~5.~~] Eligible Investment Institutions. Any commercial bank or savings and loan association chartered by the Commonwealth of Kentucky or by the U.S. government with its main office located in Kentucky shall be considered eligible to enter into repurchase agreements (as defined in this regulation) with the Commonwealth. Any investment banking firm approved by the commission at

an open meeting shall be considered eligible.

Section 4. [6.] Reporting Requirements for Eligible Investment Institutions. The commission shall advise all eligible investment institutions of the following reporting requirements which are prerequisites for the investment of state funds in such institutions:

(1) For commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky:

(a) The institution **shall** [~~must~~] submit a copy of its quarterly financial reports as furnished to regulatory bodies, including all accompanying schedules, to the commission;

(b) The institution **shall** [~~must~~] complete and sign a repurchase agreement contract with the Commonwealth.

(2) For investment banking firms:

(a) The institution **shall** [~~must~~] submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission;

(b) The institution shall complete and sign a repurchase agreement contract with the Commonwealth.

Section 5. [~~7.~~] Kentucky Banks and Savings and Loan Associations, Priority for Placement of Repurchase Agreements. Pursuant to KRS 42.520, the commission shall assign public funds to public depositories by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business. Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be placed pursuant to the following guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, the prioritization factors for placement of repurchase agreements with maturities longer than one (1) year shall be as follows:

(1) For repurchase agreements with maturities equal to or greater than 365 days, the following financial criteria **shall** [~~must~~] be met or exceeded:

(a) A loan to deposit ratio of equal to or great than seventy (70) percent;

(b) A nonperforming loan to capital ratio of equal to or less than twenty (25) five percent;

(c) A capital to assets ratio of equal to or greater than seven (7) percent; and

(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be limited to $5,000,000 per institution.

(3) The office shall review the financial ratios listed semiannually to determine eligibility of institutions. Existing repurchase agreements with maturities equal to or greater than one (1) year with institutions which fail to meet the minimum criteria for two (2) consecutive reporting periods **shall be** [~~are~~] subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

Section 6. [~~8.~~] Maximum Size of Repurchase Agreement per Institution. (1)(a) The commission shall not enter into any repurchase agreement with a commercial bank or savings and loan association of more than $25,000,000.

(b) A repurchase [~~, provided, however, that no such~~] agreement **with a commercial bank or savings and loan association** shall **not** be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(2) There shall be no limitation on the amount of repurchase agreements entered into with investment banking firms.

(3) The commission shall review at a minimum on an annual basis, the maximum size of repurchase agreements per institution.

Section 7. [~~9.~~] Payment for and Safekeeping Purchases. (1) All transactions **shall** [~~will~~] be conducted on a payment-versus-delivery basis.

(2) **A** [~~In no event will any~~] party **shall not** allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(3) Subject to the approval of the commission, securities purchased from commercial banks, savings and loan associations, or investment banks in a repurchase agreement shall be received, verified, and safe-kept by the state's general depository bank or its agent [~~(subject to the approval of the commission)~~].

Section 8. [~~10.~~] Eligible Securities. **The following shall be considered eligible for repurchase agreements:**

(1) An investment security issued or guaranteed by:

(a) The United States Treasury; or

(b) An agency, corporation, or instrumentality of the government of the United States; or

(2) A security authorized for investment pursuant to KRS 42.500(6). [~~Any investment security issued or guaranteed by the United States Treasury; or any agency, corporation or instrumentality of the government of the United States or any other security authorized for investment pursuant to KRS 42.500(6), will be considered eligible for repurchase agreements.~~]

Section 9. [~~11.~~] Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value (including accrued interest) of not less than 102 percent of the face value of the repurchase agreement.

(2) In the state's general depository banking contract, the commission shall require the general depository to review the sufficiency of collateral on all repurchase agreements. This review shall occur at least every seven (7) calendar days. [~~The commission shall cause to have entered in the state's general depository banking contract, language requiring the general depository to review the sufficiency of collateral on all repurchase agreements, at least every seven (7) calendar days. Further,~~]

(3) The commission shall demand additional securities **to** be delivered immediately**, if** [~~should~~] market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 10. [~~12.~~] Status of Parties. (1) Both the commission and the commercial bank, savings and loan association, or investment bank shall be considered principals in all repurchase agreements and **shall not** [~~never~~] be considered to be acting as agents for third parties.

(2) All contractual obligations shall apply to and be binding on the commission and the specific financial institution with which the repurchase agreement is initially negotiated and settled.

Section 11. [~~13.~~] Default. **(1) If an institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall immediately liquidate all securities delivered to it under the repurchase agreement.**

(2) [~~The commission shall, in the case of default, or the suspicion of default, on the part of any institution with which it has entered into a repurchase agreement, immediately liquidate all securities delivered to it in the repurchase agreement.~~] From the proceeds, the commission shall pay itself the full principal and accrued interest due as of

the date of liquidation. [~~Any~~] Remaining cash balances **shall** [~~will~~] be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section **12.** [~~14.~~] Contract. **(1) A** formal agreement[~~s~~] shall be signed by commercial banks, savings and loan associations, and investment banks desiring to enter into repurchase agreements with the Commonwealth.

(2) Prior to executing a repurchase agreement with the Commonwealth, each commercial bank and savings and loan association and investment bank **shall** [~~must~~] agree to and sign the Commonwealth's repurchase agreement contract [~~prior to executing a repurchase agreement with the Commonwealth~~].

BRERETON C. JONES, Chairman
APPROVED BY AGENCY: July 6, 1992
FILED WITH LRC: July 14, 1992 at 4 p.m.

STATE INVESTMENT COMMISSION
(As Amended)

200 KAR 14:091. Guidelines for money market instruments.

RELATES TO: KRS Chapter 42
STATUTORY AUTHORITY: KRS 42.525
NECESSITY AND FUNCTION: KRS 42.525, provides that the State Investment Commission shall prescribe **standards** [~~rules~~] for the operation of the state's investment program. This **administrative** regulation establishes the **standards** [~~rules~~] which shall apply to the use of certain money market instruments which include bankers' acceptances, commercial paper and negotiable collateralized and uncollateralized certificates of deposit.

Section 1. Definitions. For purposes of this regulation:
(1) "Commission" means the State Investment Commission;
(2) "Office" means the Office of Financial Management and Economic Analysis;
(3) "Bankers' acceptance" means a short-term negotiable discount note drawn on and accepted by a bank or trust company which is obligated to pay the face value amount at maturity, which is rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.
(4) "Commercial paper" means an unsecured promissory obligation having a maturity of less than 270 days and is originated by an institution that is rated in the highest category by a nationally recognized rating agency.

Section 2. Bankers' Acceptances. (1) The office may purchase **bankers' acceptances** [~~these instruments~~] if originated by a bank rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
(2) The purchase of these instruments shall be:
(a) Made on a payment versus delivery basis; and
(b) [~~shall be~~] Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission;
(3)**(a) Investment in bankers' acceptances shall** [~~These investments may~~] be made for a period of no longer than six (6) months per investment.
(b) [~~and~~] The total amount of the investment in this security shall not exceed the amount of $10 million in one (1) institution at a time.

Section 3. Commercial Paper. (1) The office may purchase **commercial paper** [~~these instruments~~] when originated by an issuer that is rated in the highest category by a nationally recognized rating agency;
(2) The purchase of these instruments shall be:
(a) Made on a payment versus delivery basis; and
(b) [~~shall be~~] Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission;
(3) The investments in commercial paper shall be made for a period of no longer than nine (9) months per investment and the total amount of the investment in this security shall not exceed the amount of $10 million by any issuer at a time.

Section 4. Negotiable Certificates of Deposit, Collateralized and Uncollateralized. (1) The office may purchase **collateralized and uncollateralized negotiable certificates of deposit** [~~these instruments~~] when issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
(2) The purchase of these instruments shall be:
(a) Made on a payment versus delivery basis; and
(b) [~~shall be~~] Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission;
(3)**(a) Investment in negotiable certificates of deposits shall** [~~These investments may~~] be made for a period of no longer than six (6) months per investment.
(b) [~~and~~] The total amount of investments in **certificates of deposit** [~~these securities~~] shall not exceed the amount of $10 million in any one (1) institution at a time.

Section 5. Limit of Money Market Instruments of the State's Total Portfolio. The aggregate investment in bankers' acceptances, commercial paper, and negotiable certificates of deposit shall not exceed twenty (20) percent of the Commonwealth's total investment portfolio.

[~~Section 6. Exceptions. There shall be no exceptions to these guidelines except those approved by the commission or the executive director of the office on the commission's behalf based upon the liquidity needs of the Commonwealth.~~]

BRERETON C. JONES, Chairman
APPROVED BY AGENCY: July 6, 1992
FILED WITH LRC: July 14, 1992 at 4 p.m.

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS
(As Amended)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.100
STATUTORY AUTHORITY: KRS 323A.060, 323A.210
NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to establish [~~fix~~] by rules the fees for services [~~and this regulation is intended to establish such fees~~].

Section 1. Fees. [~~The following shall be the fees to be charged by the board and no such fee shall be refundable:~~]
(1) Renewal fees: $100 [~~sixty (60) dollars~~]. [~~The secretary shall notify all license holders of the renewal dates on May 1 of each year.~~]
(2) Duplicate certificate: ten (10) dollars.
(3) [~~For~~] Issuance of original license certificate: $200 [~~sixty (60) dollars~~].
(4) **Renewal certificate: renewal fee established in subsection (1) of this section, plus fee for delayed renewal established by KRS 323A.100(1).** [~~For restoration of an expired license: restoration fee of $200 [125] and a $200 [sixty (60) dollar] renewal fee with penalty as provided in KRS 323A.100.~~]
(5) **Restoration of license revoked for failure to renew:**
(a) Renewal fee established in subsection (1) of this section, plus fee for delayed renewal established by KRS 323A.100(1).

(b) If the board has determined that the certificant be returned to the status of an applicant, the fee for restoration shall include other fees required of applicants. [For reinstatement of a revoked license: $200 [thirty five (35) dollars].]

(6) [For] Issuance of a license on reciprocity basis: $200 [150].

(7) [For an] Examination: [to be determined by the board each year not to exceed] $100 per section.

MARK E. HORMAN, President
APPROVED BY AGENCY: March 30, 1992
FILED WITH LRC: May 13, 1992 at 1 p.m.

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors
(As Amended)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.040, 322.090, 322.100, 322.110, 322.120, 322.140, 322.150, 322.160, 322.420

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.120, 322.140, 322.290, 322.420

NECESSITY AND FUNCTION: KRS Chapter 322 gives the board certain authority to fix fees. [, and] This administrative regulation establishes [is intended to outline] fees for [covering various steps of] application, examination, certification, registration and [/or] renewal fees.

Section 1. Application and Registration Fees. (1)(a) The fee for registration as a professional engineer shall be $170.

(b) Thirty (30) dollars of this fee shall accompany the application for registration.

(2)(a) The fee for registration by reciprocity as a professional engineer shall be $200.

(b) This fee shall accompany the application for registration.

(3)(a) The fee for application for registration as a land surveyor shall be thirty (30) dollars.

(b) The fee for registration as a land surveyor shall be $130.

[Fees. (1) The license fee under KRS 322.040 shall be $170 [140], of which thirty (30) dollars is payable on application. If approved, the fee for examination shall be $130 [100]. The license fee under KRS 322.120 shall be $200 [150] all of which is payable on application. The license fee under KRS 322.040(2)(a) shall be $160 [140] of which thirty (30) dollars is payable as an application fee. If approved, the fee for examination shall be $120 [100]. The amounts specified as application fees shall accompany each application; fees specified as examination fees shall be received in the board office at least two (2) weeks prior to the examination date. All fees shall be transmitted by check or money order made payable to "Kentucky State Registration Board."

(2) Application fees shall be retained by the board as nonrefundable fees.

(3) If approved under KRS 322.120 the license certificate shall be issued without further fee, and if under KRS 322.040, it will be issued upon receipt by the board of the final payment of ten (10) dollars, representing the balance of the total licensing fee [of $140].

(4) Only one (1) complete application form is required for a license in any one or more branches of engineering or land surveying. However, an updating of the application and an additional examination fee of $130 [100] and an additional ten (10) dollar final fee is required for each additional branch of engineering or section of the law under which the applicant subsequently applies for licensing. The update must stress the work experience the applicant has had in the branch he wishes to add.

(5) The application fee to take the engineer in training examination shall be forty (40) dollars, and the land surveyor in training examination shall be sixty (60) [forty (40)] dollars.

(6) The annual renewal fee for the license of a professional engineer or a professional land surveyor shall be forty (40) dollars for fiscal year 1992-93 and shall be forty five (45) dollars thereafter [thirty five (35) dollars]. License renewal shall be on a biennial basis.

(7) The fee for reinstatement of an expired license shall be $250 [150].

(8) The fee for verifying a registrants licensure to another state or jurisdiction shall be ten (10) dollars.]

Section 2. Examination Fees. (1) The fee for an examination required by KRS 322.040(1) shall be $130.

(2) The fee for an examination required by KRS 322.040(2) shall be $120.

(3) The application fee for examination as an engineer in training shall be forty (40) dollars.

(4) The application fee for examination as a land surveyor in training shall be sixty (60) dollars.

Section 3. Renewal, Reinstatement, Reissuance, and Verification Fees. (1) Verification of registration: ten (10) dollars.

(2) Renewal of registration: ninety (90) dollars.

(3) The fee for reinstatement of an expired registration shall be calculated as provided by KRS 322.160.

(4) Reissuance of registration after loss or destruction: ten (10) dollars.

Section 4. Fees for Examination and Registration in Additional Branches. (1) After initial registration, a registrant may apply for examination in one (1) or more branches of engineering or land surveying for which he has not been registered.

(2) For each branch of engineering or land surveying he shall submit an:

(a) Updated application; and

(b) Examination fee of $130.

(3) Upon successful completion of an examination, he shall submit ten (10) dollars with each application for registration in a branch of engineering or land surveying.

Section 5. Payment of Fees. (1) Fees shall be paid by check or money order made payable to "Kentucky State Registration Board".

(2) An examination fee shall be transmitted in sufficient time to be received by the board at least two (2) weeks prior to the examination.

Section 6. Forms. (1) The following forms are incorporated by reference:

(a) "Application for Registration (1992)";

(b) "Professional Reference Form (1992)";

(c) "Employment Verification (1992)";

(d) "Certification of Applicant for Registration (1992)".

(2) These forms may be obtained, inspected, or copied at the Kentucky Board of Registration for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 7 a.m. to 5 p.m., Monday through Friday.

ROBERT L. KAISER, Vice Chairman
APPROVED BY AGENCY: April 10, 1992
FILED WITH LRC: April 15, 1992 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care
(As Amended)

201 KAR 29:030. Complaint processing procedures.

RELATES TO: KRS 314A.225
STATUTORY AUTHORITY: KRS 314A.205
NECESSITY AND FUNCTION: KRS 314A.205(1) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 314A. This regulation establishes the detailed procedures for the investigation of complaints received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman of the board.

(2) "Investigative assistant" means an appropriately certified individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 314A or the administrative regulations promulgated thereunder by a certified individual or other person.

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS Chapter 314A or the regulations promulgated thereunder.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a certified individual or other person and commences a formal disciplinary proceeding.

(6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

Section 2. Reception of Complaints. (1) Complaints may be submitted by an individual, organization, or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint a copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A copy of the complaint shall also be sent to the certified individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of twenty (20) days from the date of receipt to make a response.

Section 3. Preliminary Recommendations and Initial Board Review. (1) After the receipt of a complaint and the period for the individual's response has concluded, the board shall consider the preliminary recommendation of the board's attorney, the individual's response, and any other relevant material available to the board in the initial review of the complaint. The determination that the board makes at this point **shall be** [~~is~~] whether or not there is enough evidence to warrant a formal investigation.

(2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the formal investigation of a complaint against either a certified individual or a person who may be practicing respiratory care without appropriate certification, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings and recommendations to the board at their earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board's attorney [~~and/~~]or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point **shall be** [~~is~~] whether or not there is enough evidence to believe that a violation of the law or regulations may have occurred and that a hearing should be held.

(2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this regulation.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing respiratory care without proper certification, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. Such complaint shall be forwarded to the county attorney of the county of residence of the person allegedly practicing respiratory care without appropriate certification with a request that appropriate action be taken under KRS 314A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of respiratory care.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter. Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

(2) The board may at any time during this process, issue a letter of admonishment to the individual who is named in the complaint as a means of resolving the complaint. Such action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint. If this appeal is requested, the board shall immediately file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process. (1) Any notice required by KRS Chapter 314A or this regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or

if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service if by certified mail or avoidance of service if hand-delivered shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, such notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care
(As Amended)

201 KAR 29:040. Hearing procedures.

RELATES TO: KRS 314A.225
STATUTORY AUTHORITY: KRS 314A.205
NECESSITY AND FUNCTION: KRS 314A.225 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 314A or the regulations promulgated thereunder. This regulation establishes detailed procedures for the conduct of administrative hearings held pursuant to KRS 314A.205.

~~[Section 1. Purpose and Rule of Construction. The purpose of this regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the certificate holder or applicant. Accordingly, this regulation shall be liberally construed so as to aid that process.]~~

Section 1. ~~[2.]~~ Composition of the Board for Purposes of a Hearing. (1) Disciplinary actions shall be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.

(2) The board may appoint a hearing officer to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the board, and to provide legal advice to the board.

(3) A board member who has participated in the investigation of a disciplinary action or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit as a member of the board hearing that particular action and shall not be considered an eligible member for purposes of determining a quorum.

(3) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 2. ~~[3.]~~ Rights of the Certificate Holder or Applicant. The certificate holder or applicant shall have the right to be present and to be heard at the hearing, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements. The certificate holder or applicant shall also have the right to have subpoenas issued in accordance with KRS 314A.205.

Section 3. ~~[4.]~~ Prehearing Disclosure of Evidence. (1) By the board. The names, addresses and phone numbers of witnesses expected to be called by the board shall be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefor, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving the certificate holder or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. The certificate holder or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the certificate holder or applicant. At least ten (10) days prior to the scheduled hearing date the certificate holder or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the certificate holder or applicant intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the board by the certificate holder or applicant. The certificate holder or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3) Written response. At least ten (10) days prior to the scheduled hearing date the certificate holder or applicant shall also file with the board a sworn (under oath) written response to the specific allegations contained in the notice of charges. Allegations not properly answered shall be deemed admitted. The board may for good cause permit the late filing of a response.

(4) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the board hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 4. ~~[5.]~~ Order of Proceeding. (1) The hearing officer or presiding officer shall call the hearing to order and shall identify the parties to the action and the persons present and shall read the letter of notice and charges. The hearing officer shall then ask the parties to state any objections or motions. The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the certificate holder or applicant or that person's attorney, and finally by members of the board. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board, the certificate holder or applicant shall call its witnesses. Such witnesses shall be examined first by the certificate holder or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the board. Rebuttal examination of those witnesses shall proceed in the same order. Again, documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 5. ~~[6.]~~ Rules of Evidence. (1) The board shall not be bound by the technical rules of evidence. The board may receive any evidence which it considers to be reliable, including testimony which

would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, **and** need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The board retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by a majority vote of the eligible members of the board.

Section 6. [~~7.~~] Decisions by the Board. (1) Upon the conclusion of the hearing, the board shall retire into closed session for the purpose of deliberations.

(2) At the conclusion of the board's deliberations it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed order including findings of fact and conclusions of law consistent with the board's deliberations as well as a recommended order to be submitted to the full board.

Section 7. [~~8.~~] Final Approval by the Board. The board, at the next scheduled regular meeting or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 8. [~~9.~~] Continuances; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a certificate holder or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board. However, the burden is upon the certificate holder or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care
(As Amended)

201 KAR 29:050. Continuing education requirements.

RELATES TO: KRS 314A.115
STATUTORY AUTHORITY: KRS 314A.205
NECESSITY AND FUNCTION: This regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this regulation, unless the context otherwise requires:

(1) "Approved" means Kentucky Board for Respiratory Care (KBRC) recognized.

(2) "Continuing education hour" means fifty (50) contact minutes of participating in continuing educational experiences.

(4) "Offering" means an organized learning experience planned and evaluated to meet behavioral objectives; offerings may be presented in one (1) session or in a series.

(5) "American Association for Respiratory Care for Continuing Respiratory Care Education (AARC-CRCE) approval" means any offering having received recognition by this organization.

(6) "Academic courses" offered by an accredited post-secondary institution means:

(a) Respiratory care course, designated by a respiratory care course number, beyond the premandatory certification level;

(b) An academic course in the biological, psychological, sociological or physical sciences relevant to patient care and is beyond the premandatory certificate level;

(c) An academic course applicable to respiratory care practice and appropriate for the respiratory care practitioner employed in the areas of clinical practice, administration, education or research. General education courses, either electives or designated to meet degree requirements, are not acceptable. Academic credit equivalency for continuing education hours will be based on one (1) credit hour = fifteen (15) continuing education hours.

(7) "Relevant" means having content applicable to the practice of respiratory care.

(8) "Provider" means an organization approved by the Kentucky Board of Respiratory Care (KBRC) for offering continuing education programs.

(9) "Successful completion" means that the practitioner has satisfactorily met the specific requirements of the offering and the practitioner has earned the continuing education hours. Presenters of nonacademic offerings may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit will not be issued for repeated instruction of same course.

Section 2. Accrual of Continuing Education Hours Mandatory; Computation of Accrual. A minimum of twenty-four (24) continuing education hours shall be accrued by each person holding mandatory certification during the two (2) year certification period for renewal, except that those persons holding mandatory certification which is due to be renewed in January of 1995, shall receive twelve (12) continuing education hours for this renewal period only. All persons holding mandatory certification shall receive twenty-four (24) continuing education hours for each renewal thereafter. The certification period shall be January I of one year through December 31 of the following calendar year. All hours must be in or related to the field of respiratory care.

Section 3. Methods of Acquiring Continuing Education Hours. [~~The following educational activities are examples of, but not limited to, methods of acquiring continuing education hours provided they are directly related to the professional growth and development of respiratory care practitioners.~~] Continuing education hours applicable to the renewal of the mandatory certificate **shall be directly related to the professional growth and development of the respiratory care practitioner. They** may be earned by completing any of the following educational activities:

(1) Offerings having American Association for Respiratory Care (AARC) - Continuing Respiratory Care Education (CRCE) approval (including traditional and nontraditional);

(2) Academic courses as set forth in Section 1 of this regulation;

(3) Offerings provided by Joint Review Committee for Respiratory Therapy Education (JRCRTE) accredited educational programs;

(4) Relevant offerings provided by other organizations or institutions approved by the KBRC including but not limited to:

(a) Kentucky Thoracic Society (KTS) and Kentucky Lung Association (KLA);

(b) Kentucky Board of Nursing (KBN);

(c) American Heart Association (AHA);

(d) American Medical Association (AMA); or

(e) American Cancer Society.

(5) Scientific and educational lectures, workshops, or seminars

presented by the person holding mandatory certification. A maximum of one-half (1/2) of the continuing education hours may be credited for scientific and educational lectures, workshops, or seminars presented by the certificate holder. Credit **shall** [~~will~~] not be issued for repeated instruction of the same course;

(6) Related areas not specifically a part of the field of respiratory care may be approved for up to two (2) continuing education hours if the board believes that said related areas may serve to enhance the certificate holder's ability to practice.

Section 4. Procedures for Accreditation of Sponsors and Approval of Continuing Education Activities. [~~Prior approval of a continuing education offering may be requested from the board by an institution, organization, agency, or person holding mandatory certification who desires approval of a continuing education offering prior to its presentation.~~] Any entity desiring to establish accreditation of a continuing education offering prior to attendance shall apply for approval to the board at least forty-five (45) days in advance of the commencement of the offering, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, and the number of continuing education hours offered. A continuing education activity shall be qualified for approval if the board determines that the activity being presented:

(1) Is an organized program of learning; and

(2) Pertains to subject matters which integrally relate to the practice of respiratory care; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have educational training, or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of Certificate Holders. **A certificate holder shall be responsible for obtaining required continuing education hours. He shall** [~~The ultimate responsibility for continuing education hours rests with the individual. His responsibility is to~~] identify his own continuing education needs, [~~to~~] take the initiative in seeking continuing professional education activities to meet these needs, and [~~to~~] seek ways to integrate new knowledge, skills and attitudes. Each person holding mandatory certification **shall** [~~has specific responsibility to~~]:

(1) Select approved activities by which to earn continuing education hours;

(2) Obtain from the board prior approval for continuing education activities not accredited by the board;

(3) Maintain records of continuing education hours. Each person holding mandatory certification shall maintain, for a period of three (3) years, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours is not otherwise reported to the board.

(4) Document attendance and participation in a continuing education activity in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence such as written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required varies depending on the specific activity submitted to the board for approval.

(5) Fully comply with the provisions of this regulation. Failure to comply shall constitute unprofessional conduct as set forth in KRS 314A.225 and may result in the refusal to renew, suspension, or revocation of the certification.

Section 6. Carry-over of Continuing Education Hours. A person holding mandatory certification may carry over five (5) continuing education hours earned in excess of those required under Section 2 of this regulation into the immediately following certification renewal period.

Section 7. Board to Approve Continuing Education Hours; Appeal when Approval Denied. [~~(1) The board reserves the right to appoint a committee to review all applications for approval of continuing education hours.~~]

(1) [~~(2)~~] In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding mandatory certification shall have the right to appeal in writing to the board. Notice of such appeal must be received by the board within thirty (30) days after the entry date of the board's order denying approval of continuing education hours.

(2) [~~(3)~~] A hearing before the full board may be held at the request of the person holding mandatory certification if the written appeal is denied, provided the board receives written request for such hearing within ten (10) days after the entry date of the board's order denying the written appeal.

Section 8. Temporary Certificate Holders; Limited Mandatory Certificate Holders. Continuing education requirements **shall** [~~do~~] not apply to the holders of a temporary certificate or a limited mandatory certificate.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care
(As Amended)

201 KAR 29:060. Continuing education requirements for persons on inactive status; waiver.

RELATES TO: KRS 314A.115
STATUTORY AUTHORITY: KRS 314A.205
NECESSITY AND FUNCTION: This regulation delineates the continuing education requirements for mandatory certificate holders on inactive status, as well as the circumstances under which waivers or extensions for such requirements may be granted.

Section 1. The board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the person holding mandatory certification and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year. **If** [~~In the event that~~] the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding mandatory certification must reapply.

Section 2. Continuing educational requirements may be waived for **a certificate holder** [~~licensees~~] on inactive status during the [~~time~~] period they remain inactive. [~~However,~~] If **he** [~~at any time the inactive person holding mandatory certification~~] applies to the board to return to active status, **he shall** [~~the person holding mandatory certification must~~] submit proof that he [~~or she~~] has completed twenty-four (24) continuing education hours within the twenty-four (24) month period immediately preceding the date on which the application is submitted.

He [~~The person holding mandatory certification~~] may request that **he** [~~they~~] be allowed to return to active status immediately, with the provision that **he** [~~they~~] shall receive twenty-four (24) continuing education hours within six (6) months of the date on which **he** [~~they~~] return to active status. **He** [~~Additionally, certificate holders proceeding under this provision~~] shall be responsible for meeting the requirements of 201 KAR 29:050 in order to properly qualify for renewal of **his certification** [~~their license~~] in the next certification period.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 2:044. 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
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this **administrative** 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. **Migratory birds in the section shall only be taken during the seasons listed.**

(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. [~~2.~~] Bag and Possession Limits. **The following bag and possession limits shall apply to all migratory birds listed in this section.**

(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. **The following shooting hours shall apply to all migratory birds listed in this section.**

(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 **shall** 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 **shall** 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)(a) **The department shall set dove hunter density limits for fields on wildlife management areas after considering the:**

1. Terrain of the fields;

2. Topography of the fields;

3. Providing for approximately forty (40) yards between hunters.

(b) Strategically located signs shall be posted in fields advising hunters:

1. Of recommended hunter densities; and

2. That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(c) Any person behaving in an unsafe or uncooperative manner shall be required to leave the premises. [~~(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 shall be possessed and used by hunters when taking or attempting to take waterfowl statewide.** [~~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 **shall not be used** [~~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 13, 1992 at 10 a.m.

DEPARTMENT OF AGRICULTURE
(As Amended)

302 KAR 20:058. Brucellosis eradication.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.110, 257.120, 257.480, 257.030
NECESSITY AND FUNCTION: To provide the procedure for enabling the Board of Agriculture to eliminate brucellosis by ordering the slaughtering or destruction of a bovine herd upon a determination of infection of or exposure to brucellosis within the herd. Such methods are necessary in order to achieve status of brucellosis free state.

Section 1. Definition. [~~s. As used in this regulation unless the context clearly requires:~~] "Bovine herd" [~~shall~~] means all cattle (genus Bos), bison including calves maintained on common ground for any purpose, [~~of~~] two (2) or more groups of cattle [~~(genus Bos)~~], **or** bison under common ownership or supervision, geographically separated but which **are interchanged or moved** [~~have an interchange or movement of animals~~] without regard to health status.

Section 2. Procedures. (1) **Except as provided in paragraphs (a) and (b) of this subsection, if the State Board of Agriculture or its authorized agents determine that any bovine animal or herd is infected with brucellosis on the farm of origin, then the board or its authorized agents shall order that the bovine animals or herd be depopulated within thirty (30) days of notification of the order to the owner:**

(a) If an infected herd has had 100 percent of the bovine animals vaccinated as provided in 302 KAR 20:055; and

1. Has an infection rate of less than twenty (20) percent then a quarantine pursuant to 302 KAR 20:057 shall be placed upon the herd;

2. Has an infection rate of twenty (20) percent or greater than the entire herd shall be depopulated.

(b) If only one (1) reactor is identified on the farm of origin, then the herd shall be quarantined for 300 days pursuant to 302 KAR 20:057, and milk or tissue samples for culture and isolation

of the brucella organism shall be collected:

1. If the culture and isolation is of field strain brucella abortus, the herd shall be depopulated;

2. If the culture and isolation reveals brucella strain 19 vaccine the herd shall be released from quarantine;

3. If culture fails to isolate brucella abortus, the herd shall remain under quarantine and complete herd tests shall be conducted as determined by the state veterinarian or as determined by the Uniform Methods and Rules for Brucellosis Eradication. [~~Whenever the State Board of Agriculture or its authorized agents determine that any bovine animal or herd is found to be infected with brucellosis, on the farm of origin, the board or its authorized agents shall order that the bovine animals or herd be slaughtered or destroyed within thirty (30) days of notification of the order to the owner. There are two (2) exceptions to this procedure as follows:~~

~~(a) The first occurs when an infected herd which has had 100 percent of the eligible bovine animals vaccinated as provided in 302 KAR 20:055 has an infection rate of less than twenty (20) percent. In this event a quarantine as set forth in 302 KAR 20:057 shall be placed upon the herd. If an infected herd, which has been 100 percent calfhood vaccinated, has a twenty (20) percent or greater rate of infection the entire herd shall be slaughtered or destroyed.~~

~~(b) The second exception occurs when only one (1) reactor is identified on the farm of origin. In this event, the herd shall be quarantined for 300 days pursuant to 302 KAR 20:057. During this period of quarantine milk and/or tissue samples for culture and isolation of Brucella organism shall be collected. In the event that the culture and isolation is of field strain Brucella, the herd shall be depopulated. In the alternative, if the culture and isolation reveals Brucella strain 19 vaccine the herd shall be released from quarantine. When culture isolation fails to isolate Brucella, the herd shall remain under quarantine and complete herd test shall be conducted as determined by the state veterinarian or as determined by the Uniform Methods and Rules for Brucellosis Eradication.~~] [~~with the exception of an infected herd which has had 100 percent of eligible bovine animals vaccinated as provided in 302 KAR 20:055, and has an infection rate of less than twenty (20) percent. In such event, a quarantine as set forth in 302 KAR 20:057 shall be placed upon the entire herd. If the infected herd has been 100% calfhood vaccinated and has a twenty (20) percent or greater rate of infection, the entire herd shall be slaughtered or destroyed.~~]

(2) The board or its authorized agents shall order destruction of the animals described in Section 1 of this **administrative** regulation as provided in KRS 257.110. [~~This shall be done by~~] Notification to the owner of the order of destruction **shall be** delivered to the owner or mailed to the owner's business address by certified mail.

(3) Indemnity for destroyed animals shall be paid **pursuant to KRS 257.120(2) if funds are available** [~~per KRS 257.120(2) as availability of funds permits~~]. Determination of payment shall be made by the state veterinarian in accordance with 302 KAR 20:056.

(4) **If an owner of an infected herd designated for slaughter feels the brucellosis testing is inaccurate, a request for retesting of the animals shall be submitted to the state veterinarian within ten (10) days of the date notification of the first test results were received by the owner pursuant to KRS 257.115.**

(5) Notices to owners of cattle shall be sent by certified mail. [~~In the event, an owner of an infected herd designated for slaughter feels the brucellosis testing is inaccurate, a request for retesting of the animals may be submitted. Said request must be made to the state veterinarian within ten (10) days of the date notification of the first test results were received by the owner as provided in KRS 257.115. Original notice to owners of cattle shall be sent by certified mail.~~]

Section 3. Extension of Time. An additional thirty (30) days may be requested before destruction of the animals is completed upon written request and for good cause shown. The granting of the extension shall be done by the state veterinarian and under no circumstances shall more than one (1) extension be granted.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: July 10, 1992
FILED WITH LRC: July 10, 1992 at 10 a.m.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Hay and Grain
(As Amended)

302 KAR 34:060. Criteria for maintaining license under forward pricing contracts.

RELATES TO: 1992 Acts c. 76
STATUTORY AUTHORITY: KRS 251.440, 251.480, 251.490, 251.500, 251.990, 1992 Acts c. 76 §1,2
NECESSITY AND FUNCTION: To establish the criteria for maintaining status as licensed grain establishment, when forward pricing (delayed pricing) contracts are in use.

Section 1. Applicability. This administrative regulation shall apply to all grain establishment licensees using forward pricing (delayed pricing) contracts.

Section 2. [~~1.~~] By the tenth day of each month the licensee shall submit an original 1992 Daily Position Reporting Form to the Department of Agriculture, Division of Hay and Grain. This form is hereby incorporated by reference and may be obtained from the Department of Agriculture, Division of Hay and Grain, 106 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m. Each form shall be completed in its entirety. In completing this form each grain type must be listed separately.

Section 3. [~~2.~~] All forward pricing (delayed pricing) contracts shall be kept in a readily accessible and fully indexed file. The licensee shall make this file available for review by the Department of Agriculture, Division of Hay and Grain Inspectors during regular business hours.

Section 4. [~~3.~~] All scale tickets, deferred price contracts, settlement sheets, and any other forms required by KRS Chapter 251 shall be printed and maintained by the licensee. Each form shall be prenumbered at the time of printing. The forms shall be filed consecutively by serial number pursuant to Section 2 of this **administrative** regulation.

Section 5. [~~4.~~] A licensed grain establishment **shall** [~~will~~] carry insurance to cover the following: combustion, fire, tornado and **lightning** [~~lightening~~]. This insurance shall be sufficient to fully cover damage to all grain obligated to the Department of Agriculture under a contract agreement.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: August 4, 1992
FILED WITH LRC: August 14, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 1:007. Termination and reassertion of jurisdiction.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.100, 350.130, 350.135, 350.200, 350.210, 350.220, 350.405-.455, 350.465, 30 CFR 700.11(d), 710, 715, 716, 720, 730-733, 735, 917, 30 USC 1252, 1255, 1265, 1278, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.060, 350.465, 30 CFR 700.11(d), 710, 715, 716, 720, 730-733, 735, 917, 30 USC 1252, 1255, 1265, 1278, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations. This regulation establishes requirements to terminate the jurisdiction of the cabinet under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, and to reassert that jurisdiction under certain conditions.

Section 1. Termination of Jurisdiction. Beginning November 1, 1992, the jurisdiction of the cabinet under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, shall terminate when:

(1) The cabinet has determined in writing that all requirements imposed under this chapter and KRS Chapter 350 have been successfully completed; or

(2) If a performance bond was required, the cabinet has made a final decision in accordance with 405 KAR 1:050, Section 11 to release the performance bond fully. For the purposes of this section, the cabinet's decision to release the performance bond shall not be final until the time to file administrative and judicial appeals has expired and all appeals have been resolved.

Section 2. Reassertion of Jurisdiction. (1) If jurisdiction was terminated under Section 1 of this administrative regulation, the cabinet shall reassert jurisdiction under this chapter over the site if it is demonstrated that the bond release decision **or written determination referred to in Section 1 of this administrative regulation** was based upon fraud, collusion, or misrepresentation of a material fact.

(2) If the cabinet prior to November 1, 1992, terminated jurisdiction under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, the cabinet shall reassert jurisdiction under this chapter over the site if it is demonstrated that the bond release decision or other determination that led to the termination of jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 14, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 3:007. Termination and reassertion of jurisdiction.

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.135, 350.151, 350.200, 350.210, 350.220, 350.405-.440, 350.450, 350.455, 350.465, 30 CFR 700.11(d), 710, 715, 717, 720, 730-733, 735, 917, 30 USC 1252, 1255, 1265, 1278, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.060, 350.151, 350.465, 30 CFR 700.11(d), 710, 715, 717, 720, 730-733, 735, 917, 30 USC 1252, 1255, 1265, 1278, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations. For underground coal mines, this regulation establishes requirements to terminate the jurisdiction of the cabinet under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, and to reassert that jurisdiction under certain conditions.

Section 1. Termination of Jurisdiction. Beginning November 1, 1992, the jurisdiction of the cabinet under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, shall terminate when:

(1) The cabinet has determined in writing that all requirements imposed under this chapter and KRS Chapter 350 have been successfully completed; or

(2) If a performance bond was required, the cabinet has made a final decision in accordance with 405 KAR 3:050, Section 11 to release the performance bond fully. For the purposes of this section, the cabinet's decision to release the performance bond shall not be final until the time to file administrative and judicial appeals has expired and all appeals have been resolved.

Section 2. Reassertion of Jurisdiction. (1) If jurisdiction was terminated under Section 1 of this administrative regulation, the cabinet shall reassert jurisdiction under this chapter over the site if it is demonstrated that the bond release decision **or written determination referred to in Section 1 of this administrative regulation** was based upon fraud, collusion, or misrepresentation of a material fact.

(2) If the cabinet prior to November 1, 1992, terminated jurisdiction under this chapter over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, the cabinet shall reassert jurisdiction under this chapter over the site if it is demonstrated that the bond release decision or other determination that led to the termination of jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 14, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

TRANSPORTATION CABINET
Office of Aeronautics
(As Amended)

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.

RELATES TO: KRS 183.861 to 183.990, 14 CFR 91.119

STATUTORY AUTHORITY: KRS **183.011(15),** 183.861

NECESSITY AND FUNCTION: To define [~~certain~~] terms used in the administrative regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport Zoning Commission or any individual to whom he has delegated his authority in the matter concerned.

(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.

(3) "FAA" means the Federal Aviation Administration.

(4) [~~(3)~~] "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Aeronautical and Zoning Terms. (1) "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of an airport and the safe and efficient utilization of the navigable airspace.

(2) "Aircraft" means **as defined in KRS 183.011(2)** [~~a heavier than air fixed wing aircraft or rotocraft that depends principally on its engine for flight through the air~~].

(3) [~~(1)~~] "Airport" [~~as used in these regulations,~~] means **as defined in KRS 183.011(5).** [~~any area of land or water used in maneuvering for landing and taking off of aircraft operated or constructed by any person, an airport board or other governmental agency located within the Commonwealth which is available for public use and is designed for the landing and taking off of aircraft, and any appurtenant areas used, or intended for use, for airport building facilities, or rights of way, and all airport buildings and facilities located thereon; including, but not limited to, runways, taxiways, aircraft ramps, terminal and cargo buildings, gates, hangars, shops, service buildings, automobile parking, motels, restaurants, retail and wholesale stores, banks, automobile service facilities and garages, and entrance and service roads used or useful in connection with or as a part of the airport.~~]

(4) "Airport land use permit" means the approval by order of the commission of a request by a publicly-owned airport to change a use or activity within an airport to one which is otherwise prohibited by the administrative regulation of the commission.

(5) "Airport master plan", "airport layout plan" or "airport map" means the basic plan for the layout of an existing or proposed publicly-owned airport that shows at a minimum:

(a) The present boundaries of the airport and of the off-site area that the owner of a publicly-owned airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;

(b) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and

(c) The location of existing and proposed nonaviation areas, and of their existing improvements.

(6) "Airport reference point" means that point on an airport which is used to geographically locate the airport.

(7) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the administrative regulations of the commission.

(8) "Approach surface" means an imaginary surface at an airport longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(a) The inner edge of the approach surface shall be the same width as the primary surface and shall extend uniformly to a width of:

1. 1,250 feet for that end of a utility runway with only visual approaches;

2. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

3. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

4. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (3/4) of a statute mile;

5. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) statute mile; and

6. 16,000 feet for precision instrument runways.

(b) The approach surface shall extend for a horizontal distance of:

1. 5,000 feet at a slope of twenty (20) to one (1) for all utility and visual runways;

2. 10,000 feet at a slope of thirty-four (34) to one (1) for all nonprecision instrument runways other than utility; and

3. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.

(c) The outer width of an approach surface to an end of a runway shall be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(9) "Conical surface" means an imaginary surface at an airport extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.

(10) "En route obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off-airway route for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(11) "Established airport elevation" means the highest point on an airport's existing or planned runway expressed in feet above mean sea level.

(12) "Horizontal surface" means an imaginary horizontal plane at an airport 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc shall be:

(a) 5,000 feet for all runways designated as utility or visual; or

(b) 10,000 feet for all other runways.

(c) The radius of the arc specified for each end of a runway shall have the same arithmetical value. That value shall be the highest determined for either end of the runway. If a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(13) "Navigable airspace" means **as defined in KRS 183.011(15) and** air space at and above the minimum safe altitudes of flight and the air space necessary for normal landing or taking off of aircraft. Except where necessary for takeoff and landing, the minimum safe altitudes as defined in 14 CFR 91.119 are:

(a) Over any congested area of a city, town or settlement, or over any open air assembly of persons, an altitude of 1000 feet above the highest obstacle within a horizontal radius of the aircraft;

(b) Over other than congested areas, an altitude of 500 feet above the surface except over open water or sparsely populated areas; or

(c) Over open water or sparsely populated areas, an altitude of 500 feet above any person, vessel, vehicle or structure.

(14) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its administrative regulations.

[~~(15) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.~~]

(15) [~~(16)~~] "Primary surface" means an imaginary surface longitudinally centered on a runway. If the runway has a specially prepared hard surface, the primary surface shall extend 200 feet beyond each end of that runway. If the runway has no specially prepared hard surface, or planned hard surface, the primary surface shall end at each end of that runway. The elevation of any point on the primary surface shall be the same as the elevation of the nearest point on the runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:

(a) 250 feet for a utility runway having only visual approaches;

(b) 500 feet for a utility runway having nonprecision instrument approaches; or

(c) For other than a utility runway the width shall be:

1. 500 feet for a visual runway having only visual approaches;

2. 500 feet for a nonprecision instrument runway having visibility minimums greater than three-fourths (3/4) statute mile; or

3. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile, and for a precision instrument runway.

~~[(2) "Jurisdictional surface" means that surface extending from the periphery of the runway airport reference points as established on the zoning map and extending outward and upward therefrom at a slope and horizontal distance as defined in these regulations.]~~

(16) ~~[(17)]~~ ~~[(3)]~~ "Publicly-owned ~~[use]~~ airport" means an airport that is open to the general public without prior request to use the airport and which is owned by a public agency, governmental body, airport board, or quasi-governmental body.

(17) ~~[(18)]~~ "Publicly-owned airport imaginary surfaces" means the air space around an airport necessary for the safe landing and taking off of aircraft. The size of each imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end. The types of imaginary surfaces are defined in this section.

(18) ~~[(19)]~~ ~~[(4)]~~ "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map, airport master plan or ~~[, and]~~ Federal Aviation Administration (FAA) form 7480-1, Notice of Landing Area Proposal. The~~[re are four]~~ types of runways and their approaches for airport zoning purposes are:

(a) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document.

(b) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), microwave landing system (MLS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan or any other FAA planning document.

~~[(c) "Utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.]~~

(c) ~~[(d)]~~ "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

(d) "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.

(e) "Other than utility runway" means a runway that is constructed for and intended to be used by aircraft with a maximum gross weight both above and below 12,500 pounds. The aircraft may be propeller-driven, turbo-propelled, or jet-propelled.

(19) ~~[(20)]~~ "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

~~[(5) "Navigable airspace" means air space above the minimum safe altitudes of flight prescribed by the regulations of the Federal Aviation Administration FAR Part 91.79 consistent therewith, and includes the air space necessary for normal landing or taking off of aircraft.~~

~~(6) Public airport imaginary surfaces. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.~~

~~(a) Horizontal surface - a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:~~

~~1. 5,000 feet for all runways designated as utility or visual;~~

~~2. 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 foot arc is encompassed by tangents connecting two (2) adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.~~

~~(b) Conical surface - a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.~~

~~(c) Primary surface - a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:~~

~~1. 250 feet for a utility runway having only visual approaches.~~

~~2. 500 feet for a utility runway having nonprecision instrument approaches.~~

~~3. For other than a utility runway the width shall be:~~

~~a. 500 feet for a visual runway having only visual approaches.~~

~~b. 500 feet for a nonprecision instrument runway having visibility minimums greater than three fourths (3/4) statute mile.~~

~~c. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three fourths (3/4) of a statute mile, and for a precision instrument runway.~~

~~(d) Approach surface - a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.~~

~~1. The inner edge of the approach surface is the same width as the primary surface and it extends uniformly to a width of:~~

~~a. 1,250 feet for that end of a utility runway with only visual approaches;~~

~~b. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;~~

~~c. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;~~

~~d. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three fourths (3/4) of a statute mile;~~

~~e. 4,000 feet for that end of a nonprecision instrument runway,~~

~~other than utility, having a nonprecision instrument approach with visibility minimums as low as three fourths (3/4) statute mile; and~~

~~f. 16,000 feet for precision instrument runways.~~

~~2. The approach surface extends for a horizontal distance of:~~

~~a. 5,000 feet at a slope of twenty (20) to one (1) for all utility and visual runways;~~

~~b. 10,000 feet at a slope of thirty four (34) to one (1) for all nonprecision instrument runways other than utility; and~~

~~c. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.~~

~~3. The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.~~]

(20) [~~(21)~~] [~~(c)~~] "Transitional surface" means the imaginary surface at an airport which [~~these surfaces~~] extends outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

[~~(7) "Aircraft" means a heavier than air fixed wing aircraft or rotocraft that depends principally on its engine(s) for flight through the air.~~

~~(8) "Airport reference point" means that point on an airport which is used to geographically locate the airport.~~

~~(9) "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for an airport as described in the U.S. Standard Terminal Instrument Procedures.~~

~~(10) "Enroute obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off airway route as prescribed in the U.S. Standard Terminal Instrument Procedures.~~]

Section 3. The publication of the Federal Aviation Administration "U.S. Terminal Procedures, Southeast Volume 1 of 3" published **August 20, 1992** [~~June 25, 1992~~] is incorporated by reference as a part of this administrative regulation. A copy of the U.S. Terminal Procedures, Southeast Volume 1 of 3" is on file with the administrator and may be viewed or photocopied at his office on weekdays between 8 a.m. and 4:30 p.m. eastern time. His address is Office of Aeronautics, Kentucky Airport Zoning Commission, 421 Ann Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4480. [~~General Definitions. (1) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.~~

~~(2) "Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines, and objects of natural growth whether temporary or permanent.~~

~~(3) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the regulations of the commission.~~

~~Section 4. Airport Master Plan. As used in the regulations of the commission, an approved "Airport Master Plan," "airport layout plan" or "airport map" means the basic plan for the layout of a public airport that shows as a minimum:~~

~~(1) The present boundaries of the airport and of the off site area that the owner of a public airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;~~

~~(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and,~~

~~(3) The location of existing and proposed nonaviation areas, and of their existing improvements.~~

~~Section 5. Definitions Relating to Permits. (1) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its regulations.~~

~~(2) "Airport land use permit" means the approval by order of the commission of a request by a public airport to change a use or activity within an airport to one which is otherwise prohibited by the regulations of the commission.~~

~~(3) "Variance permit" means a permit as defined above.~~

~~Section 6. "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace.~~]

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

TRANSPORTATION CABINET
Office of Aeronautics
(As Amended)

602 KAR 50:020. Kentucky airport zoning administrator.

RELATES TO: KRS 183.861 to 183.990
STATUTORY AUTHORITY: KRS 183.861
NECESSITY AND FUNCTION: To create the position of the administrator of the Kentucky Airport Zoning Commission and to define his duties and authority so [~~such~~] that the Office of the Kentucky Airport Zoning Commission may be kept open continuously for the transaction of business and to expedite the business of the commission for the convenience of the public.

Section 1. There shall be appointed upon order of the commission, an individual who shall be the administrator of the commission. The individual shall be a state merit system employee subject to all of the provisions of KRS Chapter 18A and the administrative regulations promulgated pursuant to that chapter.

Section 2. It shall be the duty of the administrator to maintain a public file in the [~~offices of the~~] Kentucky Transportation Cabinet, Office of Aeronautics showing airport zoning maps of each publicly-owned [~~use~~] airport within the state and the area around the [~~such~~] airport over which the commission [~~it~~] has jurisdiction for zoning purposes and to maintain a public file showing any administrative regulations adopted by the commission pertaining to land uses.

Section 3. The administrator shall have the authority and power, subject to the review of the commission, to:

(1) Reject, approve and disapprove applications for permits, as set forth in the administrative regulations of the commission;

(2) Conduct investigations of [~~a~~] violation of the administrative regulations of the commission;

(3) Conduct aeronautical studies of applications for permits;

(4) Direct the preparation of all documents, papers, and evidence

necessary to enforcement of the statutes and administrative regulations of the commission pursuant to KRS 183.861, 183.873 and 183.990;

(5) Cause notices to be given of all hearings of the commission that are required by statute or administrative regulation; and

(6) Perform all duties and functions that may [~~hereinafter~~] be delegated to the administrator **[~~either~~]** by the administrative regulations of the commission **[~~or its orders~~]**.

Section 4. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(As Amended)

702 KAR 1:035. Group health and life insurance.

RELATES TO: KRS [~~18A.205, 18A.225,~~] [~~156.031,~~] 161.158
STATUTORY AUTHORITY: KRS 156.070, 161.159
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] [~~KRS 18A.205 and 18A.225 authorize the purchase of group life and health insurance for state employees; and~~] KRS 161.158 authorizes local boards of education to administer group insurance coverage for its employees. This regulation provides the basis for Department of Education administration of the group health and life insurance programs for **certified** [~~certificated~~] and noncertified employees of local boards of education and interlocal educational cooperatives.

Section 1. The following definitions shall apply to this administrative regulation:

(1) "Regular, full-time, noncertified employee" means an employee having the expectation that he is to be employed for the full school term (or the remainder of the school term) as defined in KRS 158.070, and whose assignments require a minimum of eighty (80) hours per school month as defined in KRS 158.060.

(2) "Regular, full-time, certified employee" means an employee with the expectation that he is to perform duties for the full school term (or the remainder of the school term) as defined in KRS 158.070 but in no instance shall such employment require less than seventy (70) percent of the school day or school month as defined in KRS 158.060.

(3) "Interlocal educational cooperative" means two (2) or more local boards of education governed by an interlocal cooperation agreement described by KRS 65.210 through 65.300 and formed to make educational programs and services more efficiently and effectively available to boards of education on a multidistrict basis.

(4) "Unpaid leave" means leave time without pay beginning the first day of the month following an employees' last paid working day.

Section 2. [~~1.~~] Group health coverage shall consist of a single contract or the single contract dollar equivalent applied to any alternate plans of coverage contained in the master contracts between the Commonwealth and the carriers.

Section 3. [~~2.~~] Group life insurance coverage shall consist of benefit amounts as specified in the master contract between the Commonwealth and the carrier.

Section 4. [~~3.~~] For the purposes of administration of the group health and life insurance programs for local board employees, the following shall apply:

[~~(1) A regular, full-time noncertified employee is one who is employed with the expectation that he is to be employed for the full school term (or the remainder of the school term) as defined in KRS 158.070, and whose assignments require a minimum of eighty (80) hours per school month as defined in KRS 158.060.~~

~~(2) A regular, full-time certified employee is one who is employed with the expectation that he is to perform [their] duties for the full school term (or the remainder of the school term) as defined in KRS 158.070 but in no instance shall such employment require less than seventy (70) percent of the school day or school month as defined in KRS 158.060.~~

~~(3) An interlocal educational cooperative is one composed of two (2) or more local boards of education in order to make educational programs and services more efficiently and effectively available to such local boards of education on a multidistrict basis, and further such cooperative is one governed by an interlocal cooperation agreement as described by KRS 65.210 to 65.300.~~]

(1) [~~(4)~~] Regular full-time certified and noncertified employees shall be ineligible for state contribution for health and life insurance premiums if on leave without pay from the local educational agency or interlocal cooperative. Leave without pay shall include unpaid leave, unpaid sick leave, unpaid educational leave, and unpaid leave while receiving Workers' Compensation benefits. Unpaid leave is defined as beginning the first day of the month following an employee's last paid working day.

(2) [~~(5)~~] An employee on leave without pay shall not be eligible for state contribution for health and life premiums until the employee has actively returned to work from leave.

(3) An employee has actively returned to work and is eligible for state contribution for health and life premiums when he returns to work at least one (1) day of the next consecutive month after being on leave without pay.

Section 5. [~~4.~~] Each local board of education or interlocal educational cooperative shall provide to the Department of Education accurate employment data on covered employees on a month-to-month basis on such forms and such detail as may be specified by the chief state school officer.

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: May 12, 1991
FILED WITH LRC: May 15, 1991 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(As Amended)

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 **administrative** regulation establishes the requirements for the evaluation programs and policies of local school districts.

Section 1. Definitions. (1) "Teacher" **means** any certified staff person who directly instructs students.

(2) "Administrator" **means** any certified staff person other than the classroom teacher or librarian.

(3) "Other support staff" **means** any certified staff other than teacher or administrator.

(4) "Evaluation" **means** 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" **means** 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" **means** 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" **means** a process of gathering information, based on predetermined criteria in the district plan.

(8) "Conference" **means** 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" **means** performance areas, skills, or outcomes on which the certified employee shall be evaluated based on the district plan.

(10) "Indicators" **means** measurable behaviors outcomes which demonstrate performance criteria.

(11) "Standards of performance" **means** acceptable qualitative or quantitative level of performance expected of effective teachers or administrators.

(12) "Position" **means** term used to signify a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction).

(13) "Job category" **means** term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director).

(14) "Professional growth plan" **means** 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 **shall** [~~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)**(a) 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.**

(b) This training shall be in any one, or a combination, of the following skill areas:

1. Use of the local evaluation process;

2. Identification of effective teaching and management practices;

3. Effective observation and conferencing techniques;

4. Establishing and assisting with certified employee professional growth plans; or

5. Summative evaluation techniques. [~~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.~~] **(1)** The local board of education shall annually review the evaluation plan to ensure compliance with KRS 156.101 and these **administrative** regulations.

(2) 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 **administrative** regulation, in formulating the revisions.

(3) Examples of substantive change **include:** [~~are, but are not limited to,~~]

(a) Change in cycle;

(b) Observation frequency;

(c) Forms; and

(d) Appeals procedures.

(4) [~~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. **The** [~~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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(As Amended)

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

RELATES TO: KRS 351.020, 352.201
STATUTORY AUTHORITY: KRS Chapter 13A, 351.070(13)
NECESSITY AND FUNCTION: KRS 352.201 requires each underground mine to have an approved roof control plan and directs that no person shall proceed beyond temporary or permanent roof support. This regulation establishes procedures for the department's response in those circumstances in which persons work or travel under unsupported roof.

Section 1. **Definition.** [~~(1) No person shall work or travel under unsupported roof in any underground coal mine.~~] "Unsupported roof" **means the roof** [~~shall be deemed to be~~] in any portion of an underground coal mine in which no temporary or permanent roof support system has been installed and shall include any and all areas of an underground coal mine, including breaks, fall areas, and pillar lines; but "unsupported roof" shall not refer to roof which has adequate natural support and has been determined to have adequate natural support either initially or following the installation of artificial roof support.

Section 2. (1) No person shall work or travel under unsupported roof in any underground coal mine. No mining-related activities, including [~~though not limited to~~] equipment installation and maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof support shall be performed under unsupported roof, and no justification for performing any such act(s) shall be accepted by the department.

(2) Within sixty (60) days from the effective date of this regulation, all persons working in an underground coal mine shall be instructed by the management of the mine in the hazards of proceeding beyond temporary or permanent roof support**. Any person who proceeds beyond temporary or permanent roof support** [~~and all such persons~~] shall be personally liable for any violation of proceeding beyond temporary or permanent roof support. Without regard to individual responsibility, however, each mine's foreman or section foreman shall exercise primary and ultimate responsibility to ensure that no person(s) under the authority of that foreman works or travels under unsupported roof.

(3) Unless an inspector of the department observes persons working or traveling under unsupported roof, he shall **otherwise** determine if the area below unsupported roof appears to have been used or otherwise occupied by mining personnel. Use or occupancy shall be deemed to have occurred if there is physical evidence indicating to the inspector that persons have worked or traveled under unsupported roof.

Section **3.** [~~2.~~] (1) Whenever an inspector of the department observes or otherwise determines that mine personnel have proceeded under unsupported roof, the inspector shall document **that** [~~same~~] in a report to his district supervisor. That report shall include the name and location of the mine at which the violation is alleged to have occurred; the time and date of the violation, if known; the person or persons observed or believed to have worked or traveled under unsupported roof; the basis for that belief if no [~~such~~] conduct was actually observed; the name of the foreman or section foreman under whose responsibility the person(s) were working at the time the conduct occurred; the name of the instructor who administered the most recent training to the person alleged to have proceeded under unsupported roof, the date of that training, and the location at which it was administered; and a recommendation of the action to be taken by the department with respect to the violation(s) alleged. The report shall be tendered to the district supervisor within two (2) working days of the date upon which the inspector observes or becomes aware of the violation alleged.

(2) Upon his receipt of the report from the inspector, the district supervisor shall attempt to verify the matters set out in the inspector's report and in making that verification, may enter upon the premises of the underground mine at which the violation is alleged to have occurred, pursuant to KRS 351.140(8). Within five (5) working days of his receipt of the report from the inspector, the district supervisor shall tender to the commissioner a report of the alleged violation, together with a summary of the efforts undertaken by the district supervisor to verify the information set out in the inspector's report, and a recommendation to the commissioner as to any response to the violation alleged which the department should make.

(3) Within thirty (30) days of his receipt of the report and recommendation from the district supervisor, the commissioner shall determine whether the violation alleged is to be made subject to hearing. If the commissioner determines that a hearing is required to adjudicate the violation alleged, he shall cause a notice of violation to be prepared and delivered to all persons named in the district supervisor's report who appear to have responsibility, in some capacity, for that violation, which notice shall describe the violation alleged and establish a time and place for the hearing to consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise have some responsibility for that violation, shall be given not less than thirty (30) days notice of the hearing at which he [~~or they~~] will be required to appear and respond to the allegation[~~(s)~~] made.

(4) Not more than thirty (30) days following a hearing, at which the commissioner or his designee shall preside, the department shall issue findings of fact, conclusions of law and an order with respect to the matters heard at the hearing, copies of which shall be provided to the mine operator and to all parties to the hearing**.** [~~;~~] If the person charged with working or traveling under unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour course of roof control methods and safety procedures, including [~~though not limited to~~] roof control plans and the hazards of working or traveling under unsupported roof. The course of instruction shall be developed by the department, which shall administer it in the office of the district in which the violation is found to have occurred. An employer shall not be responsible for paying the salary of any person required to complete the eight (8) hour course following a finding of that person's having worked or traveled under unsupported roof, although the eight (8) hour period required to complete the course shall be treated as an excused absence by the mine operator. A person found guilty of having worked or traveled under unsupported roof or **having** [~~to have otherwise~~] permitted or contributed to that violation shall not be permitted to resume employment in any underground coal mine until he has completed the eight (8) hour course of instruction, which shall be timely provided by the department to the person[~~(s)~~] required to complete it.

(5) If any person fails to complete the eight (8) hour course of instruction, he shall be required to enroll for and complete another such course. At the discretion of the department, however, the Board

of Miner Training, Education and Certification, established in KRS 351.105, may also be advised of his failure to complete the eight (8) hour course of instruction and may commence whatever action it deems appropriate with respect to the failure to complete the eight (8) hour course of instruction.

(6) Upon the department's determination that a person has proceeded beyond temporary or permanent roof support, the management of the mine at which he was employed at the time of the violation shall conduct, with all mine employees and in the presence of a representative of the department, a training session of not less than thirty (30) minutes duration concerning roof control methods and safety procedures, specifically including [~~though not limited to~~] a discussion of the prohibition against working or traveling under unsupported roof.

Section 4. [~~3.~~] The following procedure shall apply to any person who has been found by the commissioner to have worked or traveled under unsupported roof and who has thereafter completed the eight (8) hour course on roof control methods and safety procedures described above, and who is alleged to have again worked or traveled under unsupported roof: the department's inspector shall make his report and recommendation to the district supervisor within two (2) working days of observing or becoming aware of the alleged violation. The contents of that report shall be identical to those described in Section 3 [~~2~~](1) of this regulation. Upon his receipt of the inspector's report and recommendation, the district supervisor shall, within five (5) working days, make the determination and forward to the commissioner the recommendation described in Section 3 [~~2~~](2) of this regulation. Upon his receipt of the district supervisor's report and recommendation, the commissioner shall, within thirty (30) days of his receipt of it, make the determination required of him in Section 3 [~~2~~](3) of this regulation. If the commissioner determines that a person has, following his completion of the eight (8) hour course of instruction in roof control methods and safety procedures, again worked or traveled under unsupported roof, the commissioner shall immediately make a written report of that determination to the Board of Miner Training, Education and Certification. Accompanying that report shall be the commissioner's recommendation as to possible action by the board with respect to the second alleged violation, that action to potentially include [~~though not be limited to~~] the board's requiring that the person[~~(s)~~] alleged to have worked or traveled under unsupported roof appear at a hearing convened by the board to show cause why he [~~or they~~] should not be decertified as an underground miner or as the holder of a certificate to practice a mining specialty in this Commonwealth, or both. Any hearing ordered by the Board of Miner Training, Education and Certification shall be conducted in accordance with KRS 351.102(11) and 352.390.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
APPROVED BY AGENCY: August 12, 1992
FILED WITH LRC: August 12, 1992 at 2 p.m.

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

902 KAR 10:035. Inactive status registration.

RELATES TO: KRS 223.030(3)
STATUTORY AUTHORITY: KRS 194.050(1), 223.030
NECESSITY AND FUNCTION: KRS 223.030(3) provides for an inactive status for those persons previously registered by the cabinet but not engaged in environmental health practice in the Commonwealth. The function of this administrative regulation is to provide procedures for inactive status.

Section 1. Definitions. [~~As used in this administrative regulation:~~]
(1) "Active status" means the status of a person engaged in program areas of environmental health activity that is the responsibility of the cabinet.
(2) "Inactive status" means the status of a person previously registered by the cabinet as a registered sanitarian or environmental health specialist and not engaged in environmental health activity that is the responsibility of the cabinet.

Section 2. Procedure for Applying to be in Inactive Status. (1) A person wishing to be placed in an inactive status must make a request by letter to the cabinet for inactive status.
(2) The cabinet may after review of the request, grant inactive status.
(3) Any person with inactive status shall pay the annual registration fee.
(4) A person placed in an inactive status may request by letter to the cabinet for active status at any time.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 16, 1990 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Interim Office of Health Planning & Certification
(As Amended)

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) "Mobile health services" means those services which provide medical services in various locations and which in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services,

and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

(8) [~~(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.

(9) [~~(8)~~] "Public information channels" means the Office of Communications in the Cabinet for Human Resources.

(10) [~~(9)~~] "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

(11) "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 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, **individuals with disabilities** [~~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 **shall** [~~must~~] first file a letter of intent with the interim office on **Form #1 (Letter of Intent (1992))** [~~a form prescribed by the interim office~~]. Letters of intent **shall** [~~must~~] be filed at least thirty (30) days prior to filing an application for certificate of

need. Letters of intent **shall not be** ~~[are not]~~ required for requests for nonsubstantive review under Section 7 of this **administrative** regulation.

(2) A letter of intent **shall be** ~~[is]~~ valid for a period of one (1) year. If an application is denied, a new letter of intent **shall** ~~[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 form as follows:**

(a) Form #2a (Certificate of Need Application (1992)); or

(b) Form #2b (Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services (1992)) ~~[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)**(a)** 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.

(b) Applications must be declared complete at least six (6) working days prior to the date of public notice in order to be included in **the public** ~~[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 **to be determined by a hearing officer**.

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 **with the interim office** 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:

(a) Conduct prehearing conferences to resolve issues not in dispute or not requiring an evidentiary record; and

(b) [may] Issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(4) **The hearing officer may, by prehearing order, require affected persons to submit to the interim office within five (5) working days after receipt of the prehearing order the following:**

(a) A list of witnesses on Form #3 (Witness List);

(b) A list of exhibits they intend to introduce on Form #4 (Exhibit List); or

(c) A list of persons which may appear on behalf of a party on Form #5 (Notice of Appearance). [The hearing officer may by 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 **final** [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. (1) The hearing officers shall act upon request for reconsideration no later than thirty (30) days following receipt of **a request** [such requests].

(2) 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 **in this section** [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.

1. 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.

2. **An** [Any] applicant acting under this subsection may proceed to relieve any of **these** [the above] listed emergency circumstances provided the:

a. Office is notified in writing prior to **an** [such] action; and

b. [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 nonsubstan-

tive 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) A [No] person shall not 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.

(2) [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)(a) Requests for administrative cost escalations or cost overruns shall be submitted to the interim office, on the following forms:

1. Form #6 (Cost Escalation (1992)); or

2. Form #7 (Cost Overrun (1992)).

(b) The requests shall include:

1. Amount of the escalation of overrun;

2. Factors causing the escalation or overrun; and

3. Information to assure that the scope of the project as originally approved has not changed.

(c) 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. [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)(a) 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 **Form #8 (Progress Report (1992))** [a form prescribed by the interim office] according to the timetables and standards **established in this section** [set forth below] or more frequently if required by the interim office.

(b) 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 these 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 **completed on Form #9 (Advisory Opinion (1992))** [~~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.

Section 13. Incorporation by Reference. (1) "Form #1 (Letter of Intent (1992))", "Form #2a (Certificate of Need Application (1992))", "Form #2b (Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services (1992))", "Form #3 (Witness List (1992))", "Form #4 (Exhibit List (1992))", "Form #5 (Notice of Appearance List (1992))", "Form #6 (Cost Escalation (1992))", "Form #7 (Cost Overrun (1992))", "Form #8 (Progress Report (1992))" and "Form #9 (Advisory Opinion (1992))" are incorporated by reference.

(2) These forms may be inspected, copied or obtained at the Interim Office of Health Planning & Certification, Cabinet for Human Resources, 275 East Main, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

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
(As Amended)

905 KAR 2:100. Certification of family child care homes.

RELATES TO: KRS 17.165, **Acts 1992, c. 57, Section 1 and 2, p. 412-415** [~~Senate Bill 211 1992 GA~~], 42 USC 602
STATUTORY AUTHORITY: KRS 194.050, **Acts 1992, c. 57, Section 1 and 2, p. 412-415** [~~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. **(1)** The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department **shall** have the authority to:

(a) Inspect premises;

(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) 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.

(5) [~~(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 **5 through**

11 [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.

(6) [(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.

(7) [(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.

(8) [(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.

Section 3. [(5)] Renewal. (1) The renewal certification process shall be repeated every two (2) years.

(2) [(6)] The cabinet shall review and may deny, suspend, revoke or refuse certification **if the**:

(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; **or**
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.

(3) The provider shall obtain liability insurance.

Section 4. [(7)] Appeal. (1) [(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.

(2) [(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.

(3) [(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.

(4) [(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.

(5) [(e)] If [certification,] denial or revocation **of certification** is upheld, the commissioner's notification shall specify the date by which the family child care home shall close.

(6) [(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 5. [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) **If more than four (4) infants are in care, the certified provider shall employ an assistant.** [The certified provider shall have an assistant before additional children may be in care if more than four (4) infants are in care.]

(b) **A certified provider shall not care for more than six (6) children under the age of six (6) years old. This shall include the certified provider's own or related children.** [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.]

Section 6. [(3)] The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) [(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.

(3) [(b)] The home shall be free of hazards and the following items shall be kept inaccessible to children:

(a) [1.] Medications and drugs;
(b) [2.] Cleaning supplies, poisons and insecticides;
(c) [3.] Guns, knives, scissors and sharp objects;
(d) [4.] Power tools, lawn mowers, hand tools, nails and other equipment;
(e) [5.] Matches, cigarettes, lighters and flammable liquids;
(f) [6.] Alcoholic beverages;
(g) [7.] Plastic bags; and
(h) [8.] Litter and rubbish.

(4) [(c)] Electrical outlets not in use shall be covered.

(5) [(d)] Electric fans, floor furnaces, or freestanding heaters or fireplaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) [(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:

(a) [1.] Police;

(b) [2.] Fire station;

(c) [3.] Emergency medical care, rescue squad; and

(d) [4.] Poison control center.

(7) [(f)] Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) [(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.

(9) [(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.

(10) [(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.

(11) [(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.

(12) [(k)] Outdoor stationary play equipment shall be securely anchored.

(13) [(l)] Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(14) [(m)] Health and sanitation for the child care environment shall require that the provider:

(a) [1.] Have a home that is kept clean, uncluttered and free of insects and rodents;

(b) [2.] Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(c) [3.] Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(d) [4.] Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(e) [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;

(f) [6.] Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(g) [7.] Serve only pasteurized milk or milk products;

(h) [8.] Screen windows and doors used for ventilation;

(i) [9.] Have household pets vaccinated for rabies;

(j) [10.] Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(k) [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.

(15) [(4)] Program for children. A plan for daily activities and routines shall be established.

(16) [(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.

Section 7. [(6) Child health care.] To assure a healthy environment, the provider shall:

(1) [(a)] Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(2) [(b)] Maintain for each child a health and emergency information 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 **shall include** [includes] the following information:

(a) [1.] The child's name, address, and date of birth;

(b) [2.] The names of individuals to whom the child may be released;

(c) [3.] The general status of the child's health;

(d) [4.] Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

(e) [5.] The names and phone numbers of persons to be contacted in an emergency situation;

(f) [6.] The name and phone number of the child's physician and preferred hospital; and

(g) [7.] Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(3) [(c)] Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(4) [(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

(5) [(e)] Administer nonprescription medication to a child only with written daily request of parent or guardian.

Section 8. [(7) Transportation.] To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(1) [(a)] Have written permission from a parent or guardian to transport his child;

(2) [(b)] Have a car or van equipped with seat belts which allows each child to be individually secured;

(3) [(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;

(4) [(d)] Have a valid driver's license issued by the Division of Motor Vehicles;

(5) [(e)] Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(6) [(f)] Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 138.655, and 186.020.

(7) Never leave children in a vehicle unattended by an adult.

(8) Never use the back of pickup trucks to transport children.

Section 9. [(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.

Section 10. [(9) Provider and parent communication.] The program shall ensure ongoing communication with a child's parent by:

(1) [(a)] Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(2) [(b)] Make available a copy of the certification standards to each parent;

(3) [(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

(4) [~~(d)~~] Post and provide to each parent copies of children and parent rights pursuant to SB 211.

Section 11. [~~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.~~]

(17) [~~(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 12. [~~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 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

Section 14. [~~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.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
(Amended After Hearing)

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090
STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 44.080
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to establish rules for procedures for claims and rules for operation of the board.

Section 1. Meetings. (1) Additional meetings of the board may be called by the chairman or a majority of the board at such times and places as the call directs.

(2) Three (3) members of the board shall constitute a quorum.

(3) The board shall be considered in continuous session to enter orders.

(4) The Executive Director of the Board of Claims shall serve as secretary to the board and shall have authority to order the submission of briefs, set hearings, and issue such other orders as the board may direct.

Section 2. Filing of Claims; Response to Claims. (1) Claims shall be legibly written, typed or printed and mailed or delivered to the Board of Claims office in Frankfort, Kentucky.

(2) Each claim shall contain the name and address of the claimant, the amount he is claiming and a statement of facts sufficiently clear to show that the claimant is entitled to relief under the provisions of KRS 44.070 and to enable the defendant to investigate the claim and prepare its defense.

(3) Claims may be filed by the claimant or by an attorney or legal representative acting in the claimant's behalf.

(4) The board's secretary shall promptly furnish a copy of each claim to the head of the affected agency [~~and to the Attorney General~~].

(5) All claims under $1,000 shall be investigated by the administrative staff of the board. Within forty-five (45) days from the date receipt of claim is acknowledged to the claimant, the board shall, if the claim is for less than $500, issue Findings of Fact, and an Opinion and Order either awarding or denying the claim; if the claim is for between $500 and $1,000, the staff, upon completion of its investigation, shall report to all parties its findings as to negligence. Any party who is aggrieved by these findings may request a hearing within thirty (30) days, and if requested, such hearing shall be set by the Secretary of the board. If no hearing is requested, the board, upon expiration of the thirty (30) day period, will enter its final order in the matter.

(6) All claims over $1,000 shall be investigated by the agency concerned and, within thirty (30) days, the agency shall answer the charges in writing to the board and to the claimant.

(7) If the Attorney General wishes to enter the matter, he shall file such response as he desires with the board.

(8) If the response filed by the affected agency admits liability, the secretary shall submit the matter to the board at an early meeting.

(9) If the affected agency fails to respond to the board concerning its investigation within thirty (30) days, the secretary shall submit the matter to the board at an early meeting.

(10) If the response filed by the affected agency denies negligence in a claim whose value is $1,000 or greater, the secretary shall set a hearing before a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the time and place of the hearing.

Section 3. Hearings. (1) Hearings shall be open to the public. The proceedings of hearings shall be taken by a stenographer. The hearing officer shall cause the hearing to be conducted with decorum.

(2) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction in this Commonwealth.

(3) All testimony and proof shall be presented at the hearing before the hearing officer by all parties; however, the board, on oral motion at the hearing or on written motion thereafter, shall permit further proof during thirty (30) days following the hearing.

(4) Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.

(5) If the claimant fails to appear at a scheduled hearing of which he has notice and fails to file with the board [~~show good cause~~] within five (5) days following the hearing a written statement that the board determines indicates good cause for his failure to appear, the board may order the claim dismissed. If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(6) After completion of proof and submission of the case for decision, the claimant shall have thirty (30) days to submit its brief; the defendant thirty (30) days thereafter and the claimant five (5) days for rebuttal. If the parties do not desire to submit briefs or should the board not desire that briefs be submitted, this fact should be made known at the hearing.

(7) The hearing officer shall furnish recommended [a] findings of fact, conclusions of law and order to the board [~~, with copies to the claimant or his legal representative and the attorney for the defendant,~~] within thirty (30) days after the record is completed. [~~The claimant or his legal representative and the attorney for the defendant shall then have ten (10) days from the date of receipt of the recommended findings of fact, conclusions of law and order to file exceptions with the board. Failure to file exceptions on time shall constitute a waiver of the privilege to file exceptions.~~]

Section 4. Board Decision. (1) Each claim shall be submitted to the board at an early meeting following the submission of the hearing officer's recommended findings of fact, conclusions of law and order [~~and the exceptions, if any filed by the claimant or his legal representative and the attorney for the defendant~~] [~~report~~].

(2) The board, or a majority of its members, shall render a decision on each claim at a board meeting.

(3) Regardless of the amount of any claim the matter shall be deemed finally adjudicated if the claim has been the subject of full board review.

(4) No testimony, oral argument, or other appearance by parties or counsel shall be permitted before the board unless the board for good cause expressly requests such testimony, oral argument, or appearance.

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board. Any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that

party shall be responsible for all costs necessary to establishing the fact. The parties are encouraged to stipulate the facts whenever possible.

JACK D. RAZOR, Chairman
APPROVED BY AGENCY: October 2, 1992
FILED WITH LRC: October 5, 1992 at 2 p.m.

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

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

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

Section 1. Definitions. [~~(1)~~] "Initial licensure" means the granting of a professional license under the respective KRS chapter for any person who has never been previously licensed **to practice that profession** in the Commonwealth[~~, for any person holding an inactive license, or for any person who wishes to reinstate a lapsed license~~].

[~~(2) "National accrediting body" means a council or commission which examines specific academic curricula of professional schools and certifies that these curricula are adequate for the granting of a specific professional degree or certificate.~~]

Section 2. The educational course approved by the cabinet for initial licensure shall be either of the following:

(1) Any one of those prelicensure curricula or courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. The official listing is hereby incorporated by reference and may be obtained from the AIDS Education Program, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4 p.m. on Monday through Friday excluding legal holidays. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party by submitting, to the AIDS education program, material including the title, style, (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any HIV education program, [~~or~~] course, class, seminar given by a provider that has [~~having~~] received approval of a national [~~accrediting body or a national~~] professional [~~accrediting~~] organization which regularly approves continuing education. [~~accredits programs and courses.~~]

Section 3. All courses shall include:

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

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

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

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

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

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

Section 4. The minimum length of the course for each profession shall be set by its individual licensure board.

Section 5. Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual material shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses to be given in person.

Section 6. [~~(1)(a) The cabinet shall conduct a survey of the curriculum of all prelicensure programs in Kentucky that are affected by KRS 214.615 to determine compliance with the provisions of this regulation.~~

~~(b) The survey shall be completed by July 1, 1991.~~

~~(c) The cabinet shall notify each licensure board whether its prelicensure programs comply with the provisions of this regulation.~~]

(1) [~~(2)~~](a) Upon application, an applicant for licensure, who has graduated from a prelicensure program outside Kentucky, shall submit information to the cabinet regarding the curriculum of the program as it relates to the human immunodeficiency virus and acquired immunodeficiency syndrome.

(b) Within ten (10) working days of receipt of the information, the cabinet shall certify to the applicant and the appropriate licensing board whether the curriculum complies with the provisions of this regulation.

(c) In lieu of submitting curriculum information under paragraph (a) of this subsection, an applicant may complete a course approved pursuant to Section 2 [~~1~~] of this regulation.

(2) [~~(3)~~] Licensure boards shall notify applicants of the requirements of subsection (1) [~~(2)~~] of this section.

Section 7. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more licensure boards, or if a licensure board so requests, CHR may inspect that course and may remove the course from the approved list if it does not meet the quality standards of this regulation.

Section 8. Each applicant shall certify to the boards at the time of licensure either:

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

(2) Reasonable cause for having not fulfilled the requirements of Section 2 [~~1~~] of this regulation, on an affidavit created and distributed by the cabinet. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given individual only once. A licensing board may issue a license to an individual who has submitted an affidavit of reasonable cause. If the individual does not certify fulfillment of the requirements of Section 2 [~~1~~] of this regulation within six (6) months from the date of the affidavit, the licensing board shall take appropriate disciplinary action.

(3) If an applicant has graduated from a professional school whose AIDS education curriculum is approved under Section 6 [~~1~~](1) [~~or (2)~~] of this regulation within two (2) years (five (5) years for a physician, if he has been in a residency program through-

out the interim), he shall be deemed to have met the requirement of this subsection without submitting a form.

Section 9. Each licensure board shall submit to CHR by December 31 of each year, [~~beginning in 1991,~~] a report stating the total number of persons applying for licensure in the past twelve (12) months; and of those, the number meeting the AIDS education requirement, the number having submitted an affidavit of reasonable cause, and the number of disciplinary actions taken for failure to meet the requirements of Section 2 [~~1~~] of this regulation at the expiration of the six (6) month period.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: October 5, 1992
FILED WITH LRC: October 7, 1992 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 1992

TEACHERS' RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:185. Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System.

RELATES TO: KRS 6.525, 21.427, 61.552, 61.680, 161.600, 161.608

STATUTORY AUTHORITY: KRS 161.310

NECESSITY AND FUNCTION: KRS 61.552, 61.680, 161.600, [and] 161.608, 6.525, and 21.427 set forth [out] a broad program of reciprocity among the [various] retirement systems administered under provisions of KRS Chapters 61, [and] 161, 6, and 21. This regulation defines the benefits to be provided and the administrative procedures to be followed in arriving at the appropriate payments to be made to eligible persons.

Section 1. Upon death, disability, or service retirement, the following procedure shall be applicable to a member having an account in more than one (1) retirement system:

(1) Combine the member's service in all systems.

(2) Determine eligibility in each system based on combined service.

(3) If eligible in any system, determine benefits.

(4) Check for specific exceptions such as prior service, request for separate account or special death or disability exception.

Section 2. (1) A member eligible to retire who elects service retirement from one (1) system, shall be paid from all systems in which he has an account unless he requests that his accounts be separated.

(2) The "final average salary" shall [will] be calculated by using the five (5) highest annual salaries regardless of the system under which the service was covered. Calculations shall [will] be based on the procedures in use by each system concerned.

(3) Each system shall [will] determine benefit payments on the basis of the final average salary and service credited in that system. Payments shall [will] be made by each system in accordance with established procedures. Where the normal age requirement has not been met, benefits shall be actuarially reduced.

(4) The member shall [will] not be required to elect the same retirement option in both systems. Each annuity option shall [will] apply only to the system for which it is elected.

(5) A member may elect to have each system treat his service credit in that system without regard to any other service credit, by requesting that his accounts be separated. In this case, "final average salary" shall [would] be based on the salaries earned under each system separately.

[(6) The minimum annuity of seventy-five (75) dollars per month provided in KRS 161.620 shall not apply to persons retiring with less than five (5) years service in the Teachers' Retirement System.]

Section 3. (1) If a member qualifies for disability benefits based on service in the system in which he is currently a contributing member, he shall [will] receive disability benefits from that system based on the formula used by that system and other system(s) shall [will] pay:

(a) Benefits based on separate accounts should the member elect to maintain separate accounts; or

(b) An actuarial accrued benefit based on the member's age, service, and final compensation, if eligible for this benefit; or

(c) A refund if requested by the member.

(2) If the combined service in two (2) or more systems is used to qualify a member for benefits, all systems under which the combined service would meet service requirements shall participate in benefit payments. Each system shall calculate benefits using the formula in effect in that system. The Teachers' Retirement System shall pay benefits during the eligibility period in proportion to the service in the Teachers' Retirement System as it relates to total combined service. After the expiration of the eligibility period, the benefit would be recalculated on the basis of Teachers' Retirement System service without discount.

(3) If the combined service of a member meets service requirements in only one (1) system, that system shall only pay benefits under their disability formula and the other system shall pay benefits under subsection (1)(a) to (c) of this section.

(4) The medical requirements for disability benefits shall [will] be those of the system to which the member is currently contributing, if combined service meets service requirements of that system. If service requirements are met in only one (1) system, the medical requirements of that system shall [will] prevail [regardless of current employment in another system].

Section 4. (1) An active member with Teachers' Retirement System service who has not qualified for Teachers' Retirement System service retirement at the time of death shall have death and survivor benefit coverage as follows:

(a) A Teachers' Retirement System member currently employed in a position covered by the Teachers' Retirement System shall [would] have full coverage for benefits provided by KRS 161.520 and KRS 161.655 without regard to service in any other system.

(b) A Teachers' Retirement System member currently employed in a position covered by the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System would qualify for coverage in proportion to the service in the Teachers' Retirement System as it relates to total combined service.

(c) Service in any of the [four (4)] state retirement systems affected by this regulation shall [would] qualify as continued coverage under the Teachers' Retirement System if the member was covered at the termination of employment under the Teachers' Retirement System and did not withdraw his account with the Teachers' Retirement System. This coverage shall [would] continue until the time the member became eligible for death or survivor benefits in the system under which he is currently employed.

(2) An active member with Teachers' Retirement System service who has qualified for service retirement at time of death shall [would] have coverage for death and survivors benefits as follows:

(a) If the member had sufficient Teachers' Retirement System service to qualify for retirement on that service only, full benefits shall [would] be payable to qualified survivors as provided in KRS 161.520, 161.525 and 161.655. The annuity portion shall [would] be calculated as provided in KRS 21.420 and 61.680 and actuarially adjusted for age and sex of the eligible survivor.

(b) If the member qualified for retirement only on the basis of combined service, the benefits under KRS 161.520 and 161.655 shall [would] be paid in the same proportion as the Teachers' Retirement System service was to total combined service. The annuity portion shall [would] be calculated as provided in subsection (2)(a) of this section.

Section 5. A former member of the Teachers' Retirement System who has withdrawn his account and last service credit may reinstate his account and service credit with the Teachers' Retirement System if:

(1) The member is a contributing member of the County Employ-

ees Retirement System, the Kentucky Employees Retirement System, [or] the State Police Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement System with at least one (1) year of contributing service; and

(2) If Prior Service is involved, the member shall have one (1) or more years contributing service in the Teachers' Retirement System subsequent to July 1, 1941.

Section 6. A member having valid service credit in more than one (1) of the state retirement systems may elect to purchase retirement credit for active duty time in one (1) system or he may divide the service credit between two (2) systems. If service is to be divided the following additional requirements shall all be met:

(1) The total military service credit in all systems may not exceed six (6) years.

(2) The same years active duty may not be used in more than one (1) system.

(3) Each system will calculate the costs of military retirement credit in accordance with the statutes and regulations of that system.

Section 7. (1) A Teachers' Retirement System member who has service credit in the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, or Judicial Retirement System shall have his total service in these retirement systems combined to determine eligibility for participation in the medical insurance program established by KRS 161.675.

(2) If a member is eligible for medical insurance benefits under KRS 161.675, the member may elect an insurance plan offered by any of the participating retirement systems in which the member has service credit.

(3) The cost of the member's medical insurance premium shall be prorated between the participating retirement systems based upon the member's service credit in each respective retirement system.

(4) The Teachers' Retirement System shall not pay a premium which exceeds the amount which the member is eligible to receive based upon the premium schedule in effect for each respective period of coverage.

(5) Spouses and eligible dependents may elect coverage if the member elects medical insurance coverage under the Teachers' Retirement System plan, but the retirement system shall not provide premium costs for spouses and eligible dependents if the member elects medical insurance coverage under the plan offered by any of the other participating retirement systems.

(6) Participation in the Teachers' Retirement System plan shall be limited to the period of coverage offered at the time of retirement or offered during subsequent periods of open enrollment.

(7) Reconciliation of prorated premium payments for medical insurance coverage between participating retirement systems shall be made not less than once during each fiscal year.

(8) The reciprocal provisions relating to medical insurance shall be retroactive to July 1, 1990. [~~Teachers' Retirement System members qualifying for retirement on combined service, but having less than five (5) years service in Teachers' Retirement System shall not be included for coverage under the Hospital Medical Insurance Program.~~]

VIRGINIA MURRELL, Chairperson

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: October 14, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on November 23, 1992, at 9 a.m., eastern standard time, at the Teachers' Retirement System of Kentucky Office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing date, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing will be given an opportunity to comment on the proposed administrative regulation. Individuals who do not wish to attend the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: Retired members of KTRS with service credit in other Kentucky retirement systems who retire after July 1, 1990. The eligible number will be insignificant since most KTRS members will elect to remain in the KTRS medical insurance program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Statutes require reciprocity between retirement systems.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. All retirees of Kentucky public retirement systems will be permitted to use service credit in any system to determine eligibility for medical insurance and the level of benefits provided.

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:075. Continuing education requirements.

RELATES TO: KRS 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: To establish a continuing education program for licensed hearing instrument specialists [~~aid dealers and fitters~~]; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. [~~A continuing education unit (CEU) is defined as ten (10) contact hours of participation in a board accredited continuing education program under responsible sponsorship, capable direction, and qualified instruction. The annual course of study year shall be from January 1 through December 31.~~] Each licensee shall be required to complete a minimum of [~~1.0 CEU (~~]ten (10) continuing

education [~~contact~~] hours[}] in order to renew his[~~/her~~] license [~~for the year 1980, and~~] each [~~subsequent~~] year [~~thereafter~~]. Continuing education hours for hearing instrument specialists [~~aid dealers and fitters, or units~~] in excess of the number required at the time of renewal of license may not be [~~transferred or~~] applied to future requirements.

Section 2. A minimum of five (5) of the required ten (10) continuing education hours shall be attained through programs sponsored by entities listed in Section 3(1) of this regulation. The remaining continuing education hours may be attained through any of the sources listed in Section 3 of this regulation. [~~A unit is defined as a measurement of value applied to a particular continuing hearing aid dealers and fitters education activity and is the estimate by the board of the benefit it may contribute to competence in the practice of hearing testing and fitting of hearing aids.~~]

Section 3. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of hearing instrument specialists. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions and approved by the board:

(a) The Hearing Aid Association of Kentucky (HAAK);

(b) The Kentucky Speech-Language and Hearing Association (KSHA);

(c) The International Hearing Society (IHS);

(d) The American Speech-Language and Hearing Association (ASHA);

(e) The Academy of Dispensing Audiologists (ADA); or

(f) The American Academy of Audiology (AAA).

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Manufacturers professional seminars;

(b) Accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of hearing instruments may be approved for up to two (2) continuing education hours, if the board believes that said related areas may serve to enhance the licensee's ability to practice. [~~(1) Hearing aid dealers' and fitters' continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:~~

~~(a) Recorder and audio visual presentation;~~

~~(b) In company professional seminars;~~

~~(c) Accredited schools participating in continuing education programs;~~

~~(d) Correspondence courses;~~

~~(e) Programs granted continuing education credit by other states;~~

~~(f) Programs sponsored by the National Hearing Aid Society;~~

~~(g) Continuing education television series;~~

~~(h) Programs sponsored by allied professional groups; and~~

~~(i) Professional society and association sponsored programs.~~

~~(2) The board approval of each program shall expire at the end of three (3) years.~~]

Section 4. Sponsors of continuing education programs shall be [~~are~~] responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) A sponsor shall be any person, school, association, company, corporation, or group who wishes to develop a continuing education program.

(2) Programs shall [~~should~~] be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(3) Requests for program changes shall [~~must~~] be made to and accredited by the board, or the evaluation and accreditation of the program becomes null and void.

(4) Repetitious completion of a program shall [~~will~~] not entitle the participant to additional continuing education credit.

(5) Sponsors shall maintain for three (3) years records of the name of those participants who complete a program.

Section 5. Sponsors and licensees requesting approval of continuing education for hearing instrument specialists [~~aid dealers and fitters~~] shall submit an application containing such information as the board may require on forms provided by the board. Licensees shall [~~must~~] keep valid records, receipts, and certifications of continuing education hours [~~programs~~] completed for three (3) years and submit such certification to the board on request.

Section 6. Submission of fraudulent statements or certificates concerning continuing education shall [~~will~~] subject the licensee to revocation or suspension of his license as provided in KRS Chapter 334.

Section 7. Each licensee shall submit, with the annual renewal, on forms provided by the board, a list of accredited continuing education hours [~~programs~~] completed by the licensee during the previous license year. In the event any licensee shall fail to submit a list of continuing education hours [~~programs~~] by the first of February, the board secretary shall notify the licensee at his[~~/her~~] last known address that his[~~/her~~] license shall be [~~is~~] subject to suspension. Upon proper application to the board a licensee may be granted a deferral on a year to year basis at the discretion of the board for such reasons as illness, incapacity, or other similar extenuating circumstances. A licensee shall be [~~is~~] exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 8. Each [~~hearing aid~~] licensee shall keep the board informed of his correct address.

[~~Section 9. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.~~]

STEVE BARLOW, Chairman

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1992, at 1 p.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 November 18, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 275 individuals credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: Licensees are required to receive continuing education currently. This will not increase costs.

1. First year: No new costs.

2. Continuing costs or savings: No new costs.

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

(b) Reporting and paperwork requirements: The reporting requirements are unchanged from the existing regulation.

(2) Effects on the promulgating administrative body: This regulation sets the continuing education requirements for licensees. This is an amendment.

(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: The reporting requirements are unchanged from the existing regulation.

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

(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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Social Work
(Proposed Amendment)

201 KAR 23:020. Examination; fee.

RELATES TO: KRS 335.010 to 335.160, 335.990

STATUTORY AUTHORITY: KRS 335.070

NECESSITY AND FUNCTION: KRS 335.080[~~(1)(d)~~], 335.090[~~(1)(e)~~], and 335.100[~~(1)(d)~~] require applicants to pay an examination fee fixed by the board. [~~successfully complete an examination for licensure, the procedures for which are set forth by regulatory authority.~~]

Section 1. Having satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for license as a certified social worker shall forward to the board an examination fee in the amount of $115 [~~seventy five (75) dollars~~].

Section 2. Having made application to the board and satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for licensure as social worker shall forward to the board upon request an examination fee in the amount of $115 [~~seventy five (75) dollars~~].

Section 3. Having made application to the board and satisfied all other requirements for licensure and having been approved to sit for an examination developed by the board, an applicant for specialty certification in the area[s] of clinical social work[~~, community social work, social work research or social administration and management,~~] shall forward to the board upon request an examination fee in the amount of $115 [~~seventy five (75) dollars~~].

Section 4. The board shall administer all examinations at least twice a year.

Section 5. Any candidate for licensure as a social worker or certified social worker, or for certification for independent practice who fails to pass the required examination, may be reexamined six (6) months from the date of the previous examination. The fee for reexamination shall be $105. [~~the same as that established in Sections 1, 2 and 3 of this regulation.~~]

JACK JOHNSON, Chairman

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1992, at 3 p.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 November 18, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons applying for licensure in social work at any of the three levels shall take the examination and therefore be subject to this regulation.

(a) Direct and indirect costs or savings to those affected: Applicants would have to pay $115 for the first exam or $105 for a retake.

1. First year: The board does not anticipate any further increases in the near future.

2. Continuing costs or savings: All fees will continue at this level for the foreseeable future.

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

(b) Reporting and paperwork requirements: The examination fee should accompany the application. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets the examination fee for potential licensees.

(a) Direct and indirect costs or savings: This change reflects the actual charge which the board incurs.

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 are deposited to a trust and agency revolving account. The board then has to pay the examination service.

(3) Assessment of anticipated effect on state and local revenues: These fees make the examination process a break-even proposition.

(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 and applicants will be subject to this regulation in the same ways.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7401 et seq.

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for sulfur dioxide, carbon monoxide, ozone and nitrogen oxides is listed in Sections 4 through 7 [~~Appendices B through E~~] of this administrative regulation. The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 3 [~~Appendix A~~] of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to Section 107(d)(1) of 42 USC 7401 et seq. [~~the Clean Air Act.~~]

(3) If the air quality status in Sections 3 through 7 [~~Appendices A through E~~] of this administrative regulation has been described by the generally inclusive term "Rest of State," that portion of the state so identified has been designated on a county-by-county basis. Similarly, the term "statewide" means the entire state has been designated on a county-by-county basis.

Section 2. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 3. Attainment Status Designations for Total Suspended Particulates.

[~~APPENDIX A TO 401 KAR 51:010~~
~~ATTAINMENT STATUS DESIGNATIONS FOR TOTAL SUSPENDED PARTICULATES~~]

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
Bell Co.			X	
Boyd Co.				X
That portion of Bullitt County [~~Co.~~] in Shepherdsville			X	
That portion of Campbell County [~~Co.~~] in Newport			X	
That portion of Daviess County [~~Co.~~] in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Beltline (KY 212) projected to the river on the east				X
That portion of Henderson County [~~Co.~~] in Henderson				X
Jefferson County				X
That portion of Lawrence County [~~Co.~~] in Louisa				X
McCracken County [~~Co.~~]			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County [~~Co.~~] in Hazard				X
That portion of Pike County [~~Co.~~] in Pikeville				X
That portion of Whitley County [~~Co.~~] in Corbin			X	
Rest of State			X	

Section 4. Attainment Status Designations for Sulfur Dioxide.

[~~APPENDIX B TO 401 KAR 51:010~~
~~ATTAINMENT STATUS DESIGNATIONS FOR SULFUR DIOXIDE~~]

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

Section 5. Attainment Status Designations for Carbon Monoxide.

~~[APPENDIX C TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR CARBON MONOXIDE]~~

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X
Rest of State		X

Section 6. Attainment Status Designations for Ozone.

~~[APPENDIX D TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR OZONE]~~

Designated Area	Moderate ~~[Does Not Meet Primary Standards~~	Marginal ~~Better Than Standards]~~	Cannot be Classified or Better Than Standards
Boone County	X		
Boyd County	X		
That portion of Bullitt County within the boundaries described as follows: beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 1020; proceeding north on Ky 1020 to the beginning.	X		~~[X]~~
Caldwell County			X
Calloway County			X
Campbell County	X		
Christian County		X	
Fayette County		~~[X]~~	X

That portion of Greenup County within the boundaries described as follows: Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; proceeding north and west along the East Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning.		X
Jefferson County		X
Kenton County		X
That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road		to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of County Road 746 (the road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on County Road 746 to the junction with Dawkins Lane (also known as Saddlers Mill Road) and County Road 746; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest and then north-northwest on Massie School Road to the junction of KY 53 and Massie School Road; proceeding

on KY 53 to the north-northwest to the junction of Moody Lane and KY 53; proceeding on Moody Lane to the south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning.	X		
Trigg County			X
Rest of State		[~~X~~]	X

Section 7. Attainment Status Designations for Nitrogen Oxides.

~~[APPENDIX E TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR NITROGEN OXIDES]~~

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended administrative regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing, Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: The Clean Air Act Amendments of 1990 authorized the U.S. EPA to designate areas nonattainment and to classify them according to degree of severity. These designations and classifications were promulgated by the U.S. EPA in the Federal Register on November 6, 1991 (56 FR 56694). Kentucky's regulation is being amended to make the designations, boundaries, and classifications of moderate nonattainment areas for ozone the same as those in the Federal Register. The Federal Register designates some areas in Kentucky as marginal nonattainment. The designations for marginal nonattainment areas for ozone are not being included in Kentucky's regulation. The data now exist to demonstrate that these areas are attaining the ozone standard. A request is being submitted to the U.S. EPA to redesignate these areas as attainment. The impact of this regulation is indirect. This regulation designates the attainment status of a county. The applicability of other regulations refer to this attainment status. Four counties (Boone, Campbell, Kenton and Jefferson) previously classified urban nonattainment for ozone will now be classified moderate nonattainment. There is no impact on these counties from this regulation. Future impacts on these moderate nonattainment counties will be made by new or amended regulations scheduled for promulgation at a later date. One county (Boyd) will be reclassified from rural nonattainment to moderate nonattainment for ozone. Major existing sources in Boyd County would not be impacted, but minor sources will now be subject to the same controls as currently in Boone, Campbell, and Kenton Counties. Portions of three counties (Bullitt, Greenup, and Oldham) will be reclassified from attainment to moderate nonattainment for ozone. Sources in those moderate nonattainment counties will now be subject to the same controls as those currently in Boone, Campbell, and Kenton Counties. Although the impact of this regulation is indirect, an estimate of the number and types of existing sources affected is presented. The Division's Emissions Inventory System (EIS) indicates 41 sources of volatile organic compounds in Boyd, Bullitt, Greenup, and Oldham counties. Of these sources it appears that 6 sources are possibly affected. The types of sources are coating facilities, printing facilities, and bulk gasoline plants. Three types of sources that are not currently in the EIS for these counties are perchloroethylene dry cleaners, service stations, and gasoline tank trucks. "County Business Patterns, 1989" indicates 4 dry cleaning plants in Boyd County. Estimates of dry cleaners for those portions of Greenup, Bullitt, and Oldham which are nonattainment were not available. Based on an assumption of 1 dry cleaning facility for a population of 12,500, Bullitt and Oldham would be expected at most to have 1 each and Greenup 2. The Division's survey of gasoline dispensing facilities (service stations) indicated 35 in Boyd, 15 in Greenup, 22 in Oldham, and 28 in Bullitt as potentially affected. The Regulatory Impact Analyses for service stations, gasoline tank trucks, bulk gasoline plants, and bulk gasoline terminals will cover these facilities when the applicability in the corresponding regulations is amended.

(a) Direct and indirect costs or savings to those affected: No costs or savings are directly generated by this regulation. However, an entity may be required to meet standards set in another regulation because of the status designation in this regulation.

1.First year: Please see 1(a) above.

2.Continuing costs or savings: Please see 1(a) above.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Please see 1(a) above. Some sources in

nonattainment areas may be subject to regulation, while similar sources in attainment areas are not.

(b) Reporting and paperwork requirements: No reporting and paperwork requirements are directly generated by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The effects of the Clean Air Act Amendments have been accommodated in the Division's Management Plan.

1. First year: Please see 2(a) above.

2. Continuing costs or savings: Please see 2(a) above.

3. Additional factors increasing or decreasing costs: Please see 2(a) above.

(b) Reporting and paperwork requirements: Please see 2(a) above.

(3) Assessment of anticipated effect on state and local revenues: Please see 2(a) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Clean Air Act does not allow alternatives for those designations and classifications.

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

(a) Necessity of proposed regulation if in conflict: This amended regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: This amended regulation is not in conflict.

(6) Any additional information or comments: No additional information or comments are needed.

Tiering: Was tiering applied? Yes. Air quality attainment status is determined on an area basis. The U.S. EPA has designated 8 areas in Kentucky as nonattainment for ozone. This regulation is being amended to incorporate these designations.

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

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not relate to any aspect or service of local government.

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 on the administrative regulation.

Revenues (+/-): This regulation does not affect revenues.

Expenditures (+/-): This regulation does not affect expenditures.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Clean Air Act Amendments of 1990 authorized the U.S. EPA to designate areas nonattainment and to classify them according to degree of severity. These designations and classifications were promulgated by the U.S. EPA in the Federal Register on November 6, 1991 (56 FR 56694). Kentucky's regulation is being amended to make the designations, boundaries, and classifications of moderate nonattainment areas for ozone the same as those in the Federal Register. The designations for marginal nonattainment areas for ozone are not being included in Kentucky's regulation. The data now exist to demonstrate that these areas are attaining the ozone standard. A request is being submitted to the U.S. EPA to redesignate these areas as attainment.

2. State compliance standards. There are no standards in this regulation. This regulation designates the attainment status of areas in Kentucky.

3. Minimum or uniform standards contained in the federal mandate. There are no standards in the federal mandate. The federal mandate designates the attainment status of areas in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation is being amended to make the designations for moderate nonattainment areas for ozone identical to those in the federal mandate. The federal mandate designates some areas in Kentucky as marginal nonattainment. The designations for marginal nonattainment areas for ozone are not being included in Kentucky's regulation. The data now exist to demonstrate that these areas are attaining the ozone standard. A request is being submitted to the U.S. EPA to redesignate these areas as attainment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal and state designations for ozone are the same, except for marginal areas. The designations for marginal nonattainment areas for ozone are not being included in Kentucky's regulation. The data now exist to demonstrate that these areas are attaining the ozone standard. A request is being submitted to the U.S. EPA to redesignate these areas as attainment.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et seq., 7407(d)(1)(A)(i), (ii), and (iii), 7410, 40 CFR Part 51, Subpart I, 51.165, 51.166(g), 52.21, 52.21(r), 60, 61, 81, Subpart D, 81.318 [~~224.20-100, 224.20-110, 224.20-120~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Definitions. As used in this administrative regulation, terms not defined shall have the meaning given them in 401 KAR 51:001 or, for terms relating to the protection of visibility, in 401 KAR 51:017.

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials

processed, stored, or combusted during the selected time period.

(b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emission unit.

(c) For an emission unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area.

(3) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;

(b) Any other state and federally approved regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(4) "Begin actual construction" means initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(5) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., they have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, as incorporated by reference in Section 21 of 401 KAR 51:017.

(6) "Classification date" means September 22, 1982.

(7) "Commence" as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and has either:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of actual construction of the source to be completed within a reasonable time.

(8) "Construction" means a physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emission unit, which would result in a change in actual emissions.

(9) "Emission unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 USC 7401 et seq.

(10) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency (U.S. EPA), including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within an applicable State Implementation Plan, and a permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the State Implementation Plan, which expressly requires adherence to a permit issued under the program.

(11) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(12) "Lowest achievable emissions rate" means, for a source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation contained in an implementation plan of a state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

(b) The most stringent emissions limitation achieved in practice by the class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit a pollutant in excess of the amount allowable under an applicable standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.

(13) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a pollutant subject to regulation under 42 USC 7401 et seq.

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under a permit condition established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or

b. The source is approved to use under a permit issued under this administrative regulation;

5. An increase in hours of operation or in production rate, unless the change is prohibited under a permit condition that was established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or

6. A change in ownership at a stationary source.

(14) "Major stationary source" means:

(a) Except as provided in paragraph (b) of this subsection, a stationary source that emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 USC 7401 et seq.

(b) For ozone nonattainment areas, a stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit the following:

1. For areas classified as serious, fifty (50) tons per year or more of volatile organic compounds (VOCs) or nitrogen oxides (NO_x);

2. For areas classified as severe, twenty-five (25) tons per year or more of VOCs or NO_x;

3. For areas classified as extreme, ten (10) tons per year or more of VOCs or NO_x.

(c) A physical change that would occur at a stationary source not qualifying under paragraph (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A source that is major for VOCs shall be considered major for ozone.

(15) "Mandatory Class I federal area" means an area identified in

40 CFR 81, Subpart D, where the Administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of the Interior, has determined visibility to be an important value.

(16) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(17) "Necessary preconstruction approvals or permits" means the permits or approvals required under the regulations of Title 401, Chapters 50 to 63.

(18) "Net emissions increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An increase in actual emissions from a particular physical change or changes in method of operation at a stationary source; and

(b) Another increase or decrease in actual emissions at the source that is contemporaneous with the particular change and is otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions shall be creditable only if the cabinet has not relied on it in issuing a permit for the source under this administrative regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions shall be creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions shall be creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;

3. The cabinet has not relied on it in issuing a permit or in demonstrating attainment or reasonable further progress; and

4. It has the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(19) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall not be counted in determining the potential to emit of a stationary source.

(20) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(21) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, and quantifiable, and shall impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility that would otherwise not be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(22) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant, a rate of emissions that would equal or exceed rates given in Section 12 of this administrative regulation.

(23) "State Implementation Plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been submitted by the cabinet and approved by the U.S. EPA.

(24) "Stationary source" means a building, structure, facility, or installation that emits or may emit an air pollutant subject to regulation under 42 USC 7401 et seq.

(25) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2. [~~1.~~] Applicability. (1) [~~The requirements of~~] This administrative regulation shall apply to new major sources or major modifications commenced after the classification date defined in Section 1(7) of this administrative regulation [~~below~~] and that will locate in or impact upon an [~~any~~] area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act~~]. Area designations are contained in 40 CFR 81.318.

(2) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas which potentially have an impact on visibility in a [~~any~~] mandatory Class I federal area.

[~~Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010 or for terms relating to the protection of visibility, in 401 KAR 51:017.~~

~~(1) "Major stationary source" means:~~

~~(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or~~

~~(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.~~

~~(c) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.~~

~~(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.~~

~~(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.~~

~~(b) A physical change or change in the method of operation shall not include:~~

~~1. Routine maintenance, repair and replacement;~~

~~2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;~~

~~3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~4. Use of an alternative fuel or raw material by a stationary source which:~~

~~a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or~~

b. The source is approved to use under any permit issued under this regulation;

5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;

3. The cabinet has not relied on it in issuing any permit or in demonstrating attainment or reasonable further progress; and

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.

(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, of hours or operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;

(b) Any other state and federally approved regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(12) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(14) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

~~(15) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.~~

~~(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.~~

~~(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:~~

~~(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or~~

~~(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.~~

~~(18) "Classification date" means September 22, 1982.~~

~~(19) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.~~

~~(20) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.~~

~~(21) "Class I area" means the areas listed in paragraph (a) of this subsection. These areas may not be redesignated.~~

~~(a)1. International parks;~~

~~2. National wilderness areas and national memorial parks which exceed 5,000 acres in size; and~~

~~3. National parks which exceed 6,000 acres in size.~~

~~(b) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II but may be redesignated as provided in 40 CFR 51.24(g).~~

~~(22) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case by case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.~~

~~(23) "State Implementation Plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.~~

~~(24) "Mandatory Class I federal area" means any area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.~~

~~(25) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~(26) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.~~]

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The cabinet shall examine each proposed major new source and proposed major modification to determine if the [~~such~~] source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the cabinet shall determine whether the major stationary source or major modification would be constructed in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act~~] for a pollutant for which the stationary source or modification is major. If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Sections 5 and 11 [~~10~~] of this administrative regulation shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) [~~any~~] of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination of fossil-fuel boilers [~~thereof~~]) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another [~~Any other~~] stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61.

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas pursuant to 42 USC 7407(d)(1)(A)(ii) or (iii) [~~Section 107(d)(1)(D) or (E) of the Clean Air Act~~] if the source or modification would cause impacts which exceed the significance levels specified in Section 13 [~~Appendix B~~] of this

administrative regulation at a [any] locality that does not or would not meet the national ambient air quality standards.

2) Sources to which this section applies shall [must] meet the requirements in Section 5(1), (2) and (4) of this administrative regulation. However, the [such] sources may be exempt from Section 5(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.

(4) For sources of NO_x [nitrogen oxides], the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 [nitrogen dioxide] by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs [volatile organic compounds (VOC)] locating outside a designated ozone nonattainment area shall [will] be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source shall [may] be permitted under the applicable provisions of this administrative regulation until the area is designated nonattainment pursuant to 42 USC 7407(d)(1)(A)(i). [Section 107(d)(1)(A), (B), or (C) of the Clean Air Act. Once the area of source location has been redesignated to nonattainment status in 40 CFR 81.318, the provisions of Section 5(3) and (4) of this regulation as they relate to emissions of VOC shall not apply, provided the area is not also an urban county as defined in 401 KAR 50:010.]

(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if [both] the following conditions are met:

(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, so [such] that the new source will not cause a violation of a [any] national ambient air quality standard.

(b) The new emission limitations for the new and [source as well as any] existing sources affected shall [must] be state and federally enforceable in accordance with [the mechanisms set forth in] Section 7 of this administrative regulation.

Section 5. Conditions for Approval. [The provisions of] This section shall apply to new major stationary sources or major modifications which would be constructed in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [Section 107(d)(1)(A), (B) or (C) of the Clean Air Act] for a pollutant for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for the [such] source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant (or an [any] entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky (Commonwealth) are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, and 40 CFR Parts 60 and 61 and 42 USC 7401 et seq. [the Clean Air Act], or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except in the case of VOCs or NO_x emissions from existing sources in the affected area of the proposed new major source or modification[s] (whether or not under the same ownership) shall be reduced (offset) so [such] that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emission reductions of VOCs or NO_x to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1;
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emission reductions shall [be such as to] provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling shall not be required [is not necessary] for VOCs [volatile organic compounds] and NO_x [oxides of nitrogen]. Except as provided in Section 4(5) of this administrative regulation, compliance with subsection (3) of this section and Section 6(7) of this administrative regulation shall [will] be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated nonattainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this administrative regulation shall specify that construction shall not commence until the U.S. EPA has approved the cabinet's plan relating to the requirements of Part D, Title I, of 42 USC 7401 et seq. [the Clean Air Act.]

(6) [In nonattainment areas which have been granted an extension of the deadline to attain the primary national ambient air quality standard for ozone or carbon monoxide, pursuant to Section 172(a)(2) of the Clean Air Act,] The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the [such] proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 6. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets shall [will] be the emission limitations in effect at the time the application to construct or modify a source is filed. For areas where the demonstration of attainment for the State Implementation Plan was based on actual emissions, the baseline for determining offset credit shall be actual emissions. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis if [providing that] baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. If [Where] the cabinet requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. If [Where] the requirements of the cabinet do not contain an emission limitation for a source or source category, the emission offset baseline involving the source [such sources] shall be actual emissions determined under actual operating conditions for the previous two (2) year period. If [Where] the emission limitations required by the cabinet allow greater

emissions than the uncontrolled emission rate of the source, emission offset credit shall [will] be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source shall [will] be the allowable emissions under the emission limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, a [any] resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved shall not be [is not] acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction if the source switches [should the source switch] back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if [provided that] the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. [However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.]

(4) Credit for hydrocarbon substitution. No emission offset credit shall [may] be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after the effective date of this administrative regulation [January 16, 1979] may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation [reasonable progress toward attainment for future use]. An owner or operator of an existing source that reduces its own emissions may bank a [any] resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in 42 USC 7401 et seq. [the Clean Air Act] as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy.

(6) Offset credit for meeting NSPS or NESHAPS. If [Where] a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Offsets. The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this section for increased emissions of an air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, except that the cabinet may allow the owner or operator of a source to obtain the emission reductions in another nonattainment area if:

(a) The other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. [Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained only within the same air quality control region, as defined in 401 KAR 50:020 in which the source is to be located. For sulfur dioxide, particulate matter and carbon monoxide, the cabinet shall require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving stack emissions of VOC, offsetting emissions may be obtained and used as follows:

(a) For a source in an urban county designated nonattainment for ozone in 401 KAR 51:010, VOC emission offsets shall only be available for use when created by sources located in counties within the same urban nonattainment area.

(b) For a source not subject to paragraph (a) of this subsection, VOC emission offsets shall be available for use when created by sources located within fifty (50) kilometers of the intended user.]

Section 7. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or by the cabinet. The emission reduction shall [committed to must] be enforceable by the cabinet and the U.S. EPA [state and federally enforceable by the cabinet], and shall [must] be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth [of Kentucky] for a new source to be located in the Commonwealth, the emission reductions shall [committed to must] be [state and federally] enforceable by the neighboring state [and/]or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner [and/]or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) [and/]or reductions from other sources (external emission offsets), if the emission offsets meet the requirements of this section and Section 5(3) of this administrative regulation. [As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable.] An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset shall [will] not be accepted unless the affected source[(s)] is subject to a new emission limitation requirement of the cabinet to ensure that its emissions shall [will] be reduced by a specified amount in a specified time. The form of the new emission limitation shall [may] be enforceable by the cabinet and by the U.S. EPA [a cabinet regulation, operating permit condition, or consent or enforcement order].

(2) Cabinet initiated emission offsets. The cabinet may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source [so as] to accommodate the proposed new source. The commitment shall [must] be reflected in the emission limitation requirements of the cabinet for the new and existing sources as required by this section.

Section 8. Source Obligation. (1) An [Any] owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to Sections 4 and 5 of this administrative regulation or with the terms of an [any] approval to construct or an [any] owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982 without applying for and receiving approval according to the requirements of this section [hereunder,] shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the [such] approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a

reasonable time. The cabinet may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve an [any] owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At the [such] time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in a [any] state and federally enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 9. Permit Condition Rescission. (1) An [Any] owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the permit condition.

(2) The cabinet shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or a portion thereof if construction would have commenced after September 22, 1982, and if the owner or operator demonstrates that the [such] rescission would not violate the requirements of Sections 5(3) and 8 of this administrative regulation [interfere with reasonable further progress].

Section 10. Class I Areas. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Another area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 CFR 51.166(g), as published in the Code of Federal Regulations, Title 40, July 1, 1991.

(3) The visibility protection requirements of this section and Section 11 of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 11. [10.] Protection of Visibility. (1) New source review - applicability and exemptions.

(a) No stationary source or modification to which [the requirements of] this section applies [apply] shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(b) [The requirements of] This section shall apply to construction of a [any] new major stationary source or major modification that would both be constructed in an area designated [classified] as nonattainment under 42 USC 7407(d)(1)(A)(i) [Section 107(d)(1)(A), (B), or (C) of the Clean Air Act] and potentially have [has] an impact on visibility in a [any] Class I area.

(c) [The requirements of] This section shall apply to a [any such] major stationary source or [and any such] major modification for [with respect to] each pollutant subject to regulation under the 42 USC 7402 et seq. [Clean Air Act] that it would emit, except as provided in paragraphs (d) and (e) of this subsection [this section otherwise provides].

(d) [The requirements of] This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the [such an] institution, and the Governor of the Commonwealth [of Kentucky] requests that it be exempt from those requirements.

2. The source is a portable stationary source which has previously received a permit under this section; and:

a. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The [Such] notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) [The requirements of] This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of the Class I [such] lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on these [such] values.

(b) The cabinet shall provide written notification to all affected federal land managers of a [any] permit application for a [any] proposed new major stationary source or major modification that may affect visibility in a [any] Class I area. The cabinet shall also provide the [such] notification to the federal official charged with direct responsibility for management of [any] lands within the Class I [any such] area. The [Such] notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to a [any] public hearing on the application for a permit to construct. The [Such] notification shall include an analysis of the proposed source's anticipated impacts on visibility in a [any] Class I area. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an [any] advance notification of the [any such] permit application.

(c) The cabinet shall consider an [any] analysis performed by the federal land manager provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the [such] proposed new major stationary source or major modification may have an adverse impact on visibility in a [any] Class I area. If [Where] the cabinet finds that the [such an] analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the

public hearing notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to Section 10(3)(c) of this administrative regulation shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this section. The cabinet shall follow the procedures at 40 CFR 52.21(r) as in effect on August 7, 1980, to the extent that the procedures of 401 KAR 50:035 do not apply.

(5) National visibility goal. The cabinet shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing [~~any~~] future, and remedying [~~any~~] existing, impairment of visibility in Class I areas which impairment results from manmade air pollution. In making the decision to issue a permit the cabinet may take into account the overriding factors of the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(6) Monitoring. The cabinet may require monitoring of visibility in a [~~any~~] Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. The cabinet shall not undertake [~~Any~~] visibility monitoring [~~required by the cabinet~~] in a Class I area without the approval of [~~will be approved by~~] the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 12. Significant Pollutant and Emission Rate. For this administrative regulation, the following pollutant and emission rates shall be considered significant.

[~~APPENDIX A TO 401 KAR 51:052~~
~~Significant Pollutant and Emissions Rate~~]

Carbon monoxide:	100 per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

Section 13. Significant Levels of Air Quality Impact. For this administrative regulation, the following levels of air quality impact shall be considered significant.

[~~APPENDIX B TO 401 KAR 51:052~~
~~Significant Levels of Air Quality Impact~~]

	Annual	Averaging Time			
Pollutant	Average	24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon Monoxide	--	--	0.5mg/m^3	--	2mg/m^3

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992
FILED WITH LRC: October 14, 1992 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the proposed amended administrative regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing: John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation applies to new major sources or major modifications that locate in or impact upon an area designated non-attainment pursuant to 42 USC 7401 et seq., or that will cause an area to exceed the national ambient air quality standards. It is being amended in response to changes mandated in the Clean Air Act Amendments of 1990 (CAAA), which require the setting of threshold amounts for each classification of ozone nonattainment areas and emission offset ratios for each classification, and that sources of nitrogen oxides meet the same requirements as sources of volatile organic compounds. Prior to this amendment, a major source in a nonattainment area was one emitting 100 tons per year or more. Kentucky's New Source Review (NSR) regulation is being amended to provide that a major source in a nonattainment area will be determined according to one of five classifications of the nonattainment area: for marginal and moderate areas, 100 tons per year (TPY); for serious areas, 50 TPY; for severe areas, 25 TPY; and for extreme areas 10 TPY. At present in Kentucky, there is no ozone nonattainment classification above moderate. The CAAA also require that emissions offsets in ozone nonattainment areas be based on specific ratios (marginal, 1.1-1; moderate, 1.15-1; serious, 1.2-1; severe, 1.3-1; extreme, 1.5-1). Kentucky's NSR regulation is being amended accordingly. Numerous amendments have also been made that bring this administrative regulation into compliance with KRS Chapter 13A.

(a)Direct and indirect costs or savings to those affected: There are no costs or savings associated with KRS 13A requirements. If Kentucky does not make the federally required amendments to this administrative regulation, the U.S. EPA will enforce the federal requirements in Kentucky. There are, therefore, no costs associated with complying with the state's administrative regulation over complying with the same requirements of the federal mandate. There may, in fact, be some savings for sources to deal with a regulatory agency located in Kentucky rather than in Atlanta.

1. First year: There are no additional costs associated with complying with the state's amendments over complying with the federal mandate.

2. Continuing costs or savings: Please see discussion under (a) above.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no known additional factors increasing or decreasing costs and no anticipated effects on competition.

(b) Reporting and paperwork requirements: There are no additional paperwork requirements because of these amendments. New or modifying major sources locating in nonattainment areas will continue to submit all information necessary for the cabinet to issue New Source Review (NSR) permits.

(2) Effects on the promulgating administrative body: The cabinet will not be affected because of these amendments. The cabinet will continue to examine each NSR permit application for compliance with this administrative regulation and continue to issue permits and inspect sources that are subject to these provisions.

(a) Direct and indirect costs or savings:

1. First year: The cabinet will incur no additional direct or indirect

costs, nor will any savings result.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no anticipated additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because amendment of this administrative regulation is mandated by Section 103 of the Clean Air Act Amendments of 1990.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, overlapping, or duplicative.

(a) Necessity of proposed regulation if in conflict: This administrative regulation is not in conflict.

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

(6) Any additional information or comments: The significant proposed changes to this administrative regulation, which are outlined in item (1) "Type and number of entities affected, "are being made in order to bring it into compliance with the federal mandate in Section 103 of the Clean Air Act Amendments of 1990. Some minor language changes have been made to the state NSR regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal NSR regulation concerning the definitions of "federally enforceable" and "significant" in Class I areas, on innovative control technology waiver for sources impacting Class I areas, secondary emissions, and the requirement for health and welfare equivalence for netting. The amendments to the federal regulation concerning those issues were published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274). That Federal Register notice constituted final action on the terms of a settlement agreement between the U.S. EPA and the Chemical Manufacturers Association (CMA). These minor changes in language will have no effect on the regulated community, since they merely clarify or reaffirm existing requirements. The remaining changes have been made so that this administrative regulation will agree with the requirements of KRS Chapter 13A. The changes will not change the applicability or requirements of the existing NSR regulation.

TIERING: Was tiering applied? Yes. The administrative regulation applies to major sources or major modifications, which are defined to be sources or modifications which emit or have the potential to emit according to the threshold amounts discussed in item (1), "Type and number of entities affected," of the Regulatory Impact Analysis.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State what unit, part or division of local government this administrative regulation will affect. A local government which owns or operates a major source as defined in this administrative regulation would be subject to the same requirements as any other major source in an ozone nonattainment area.

3.State the aspect or service of local government to which this administrative regulation relates. This administrative regulation would apply to any new or modified stationary source in an ozone nonattainment area.

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 (+/-): This administrative regulation is not expected to affect local government revenues.

Expenditures (+/-): This administrative regulation is not expected to increase local government expenditures.

Other Explanation: The Cabinet has no additional comments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Clean Air Act Amendments of 1990 mandate these amendments. Some minor language changes have been made to the state NSR regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal NSR regulation published in the *Federal Register* of June 28, 1989 (54 FR 27274).

2. State compliance standards. These amendments bring the state plan in line with the federal NSR requirements for ozone nonattainment areas and with KRS Chapter 13A requirements.

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act Amendments of 1990 require that major sources in ozone nonattainment areas be classified in one of five categories according to the amount of pollutant being emitted (see item (1), "Type and number of entities affected," of the Regulatory Impact Analysis); that emissions offsets in ozone nonattainment areas be based on specific ratios; and that sources of nitrogen oxides meet the same requirements as sources of volatile organic compounds. See item (1), "Type and number of entities affected," of the Regulatory Impact Analysis for more detailed information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These requirements are identical to the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These requirements do not impose stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:175. New service stations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et seq., 7407, 7408, 7410 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from new service stations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated nonattainment for ozone according to 401 KAR 51:010 which commenced on or after the classification date defined below.~~]

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 59:001 [~~50:010~~].

(1) "Affected facility" means the gasoline storage tanks at a service station.

(2) "Classification date" means June 6, 1979.

(3) "Service station" means a [any] public or private establishment which dispenses gasoline into vehicle fuel tanks.

(4) "Submerged fill pipe" means a [any] fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a [any] fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.

(6) "Vent line restriction" means:

(a) An orifice of one-half (1/2) to three-quarters (3/4) inch inside diameter;

(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (1/2) oz. per square inch vacuum unless a different vacuum relief setting is required by safety or fire authorities; or

(c) A vent shutoff valve which is activated by connection of the vapor return hose.

[(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.]

Section 2. Applicability. This administrative regulation shall apply to each affected facility commenced on or after the classification date defined in Section 1 of this administrative regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system [with an interlocking system] and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the cabinet.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends to within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the cabinet's satisfaction to achieve an equivalent control efficiency.

(3) The owner or operator shall not allow any transport vehicle to deliver fuel to an affected facility until the transport vehicle is properly connected to the vapor balance system or alternate control system.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on December 3, 1980, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility which becomes subject to this administrative regulation because it is located in a county or portion of a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, shall comply with this administrative regulation in the following manner:

(a) Facilities constructed prior to November 15, 1990, with monthly throughput of 100,000 gallons or more of gasoline shall comply within one (1) year of the effective date of this administrative regulation.

(b) Facilities constructed prior to November 15, 1990, with a monthly throughput between 10,000 and 100,000 gallons, shall comply within two (2) years of the effective date of this administrative regulation.

(c) Facilities constructed on or after November 15, 1990, but on or before the effective date of this administrative regulation, shall comply within six (6) months of the effective date of this administrative regulation.

(d) Facilities commencing after the effective date of this administrative regulation shall comply with this administrative regulation.

(e) Facilities shall be considered to comply with the time requirements of paragraphs (a) through (d) of this subsection if the temporary operating permit authorized in Section 8(3) of 401 KAR 63:035 goes into effect by the date of compliance.

Section 5. [4.] Exemptions. An [Any] affected facility shall be exempt from the provisions of Section 3 of this administrative regulation if the monthly [annual] throughput is less than or equal to 10,000 gallons per month [120,000 gal].

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended administrative regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing, Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency contact: John E. Hornback

(1) Type and number of entities affected: The amendments to this regulation have been made to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990; to delete obsolete language; and to comply with KRS Chapter 13A. No entities are affected by the deletion of obsolete language or KRS Chapter 13A changes. The applicability of this regulation is changed from urban nonattainment areas for ozone to all nonattainment areas for ozone except marginal. Gasoline service stations in Boone, Campbell, and Kenton counties were already under this regulation and are not, therefore, affected by the applicability change. Boyd county and portions of Bullitt, Greenup, and Oldham counties are now moderate nonattainment for ozone, and service stations in these areas will be impacted. A division survey indicates approximately 100 sources are potentially subject to this regulation for new gasoline service stations commenced on or after June 6, 1979, or to 401 KAR 61:085 which has identical requirements for existing gasoline service stations commenced before June 6, 1979. A breakdown of the early results of the survey of service stations indicated 35 in Boyd county, 15 in Greenup county, 22 in Oldham county, and 28 in Bullitt county as potentially affected. The survey does not indicate whether these sources were commenced before or after June 6, 1979.

(a) Direct and indirect costs or savings to those affected: The cost of implementing these requirements is included in and is a minor part of the cost of controls required by 401 KAR 63:035, Motor vehicle gasoline dispensing facilities. Please see the Regulatory Impact Analysis for 401 KAR 63:035.

1. First year: Please see (1)(a) above.
2. Continuing costs or savings: Please see (1)(a) above.
3. Additional factors increasing or decreasing costs (Note any

effects upon competition): Some sources in nonattainment areas for ozone may be subject to regulation, while similar sources in attainment areas are not.

(b) Reporting and paperwork requirements: The paperwork to apply for a permit and records to demonstrate compliance are required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for newly affected sources. These costs will be covered by the division's approved budget.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this amendment contains the same provisions as the federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation exempts service stations from controls if the annual throughput is less than or equal to 120,00 gallons.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State what unit, part or division of local government this administrative regulation will affect. New gasoline dispensing facilities with annual throughput greater than 120,000 gallons which are located in any nonattainment area for ozone except marginal.

3. State the aspect or service of local government to which this administrative regulation relates. This service of local government is internal for government vehicles. The gasoline dispensing facilities do not directly serve the public.

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 (+/-): There is no effect on revenues.

Expenditures (+/-): The amendment to this regulation expands the applicability. The sources already under this regulation will not be impacted by this amendment. The cost to newly affected sources is included in and is a minor part of the cost of controls required by 401 KAR 63:035, Motor vehicle gasoline dispensing facilities. Please see the Fiscal Note on Local Government and the Regulatory Impact Analysis for 401 KAR 63:035.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The applicability section of this regulation has been updated to be compatible with the Clean Air Act as amended on November 15, 1990.

2. State compliance standards. This amendment does not contain standards. This amendment changes the applicability of this regulation from urban nonattainment areas for ozone to all nonattainment areas for ozone except marginal.

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act as amended on November 15, 1990, requires that this regulation apply to all nonattainment areas for ozone except marginal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendment makes the applicability the same as required in the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment is not stricter or different than required.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:085. Existing service stations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et seq., 7407, 7408, 7410 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from existing service stations.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated nonattainment for ozone according to 401 KAR 51:010 which commenced before the classification date defined below.]~~

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 61:001 [~~50:010~~].

(1) "Affected facility" means the gasoline storage tanks at a service station.

(2) "Classification date" means June 6, 1979.

(3) "Service station" means a [~~any~~] public or private establishment except farms which dispenses gasoline into vehicle fuel tanks.

(4) "Submerged fill pipe" means a [~~any~~] fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a [~~any~~] fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.

(6) "Vent line restriction" means:

(a) An orifice of one-half (1/2) to three-quarters (3/4) inch inside diameter;

(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (1/2) oz. per square inch vacuum unless a different vacuum relief setting is required by safety or fire authorities; or

(c) A vent shutoff valve which is activated by connection of the vapor return hose.

[~~(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.~~]

Section 2. Applicability. This administrative regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this administrative regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system [~~with an interlocking system~~] and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the cabinet.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the cabinet's satisfaction to achieve an equivalent control efficiency.

(3) The owner or operator shall not allow any transport vehicle to deliver fuel to an affected facility until the transport vehicle is properly connected to the vapor balance system or alternate control system.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on December 3, 1980, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility which becomes subject to this administrative regulation because it is located in a county or portion of a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, shall comply with this administrative regulation in the following manner:

(a) Facilities with monthly throughput of 100,000 gallons or more of gasoline shall comply within one (1) year of the effective date of this administrative regulation.

(b) Facilities with a monthly throughput between 10,000 and 100,000 gallons, shall comply within two (2) years of the effective date of this administrative regulation.

(c) Facilities shall be considered to comply with the time requirements of paragraphs (a) and (b) of this subsection if the temporary operating permit authorized in Section 8(3) of 401 KAR 63:035 goes into effect by the date of compliance. [~~The owner or operator of an affected facility with an annual throughput greater than or equal to 250,000 gal. shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~

~~(b) Award the control device contract no later than November 1, 1979.~~

~~(c) Initiate on site construction or installation of emission control equipment no later than April 1, 1980.~~

~~(d) On site construction or installation of emission control equipment shall be completed no later than November 1, 1980.~~

~~(e) Final compliance shall be achieved no later than February 1, 1981.~~

~~(2) The owner or operator of an affected facility with an annual throughput of less than 250,000 gal. shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~

~~(b) Award the control device contract no later than November 1, 1980.~~

~~(c) Initiate on site construction or installation of emission control equipment no later than April 1, 1981.~~

~~(d) On site construction or installation of emission control equipment shall be completed no later than November 1, 1981.~~

~~(e) Final compliance shall be achieved no later than February 1, 1982.~~

Section 5. Exemptions. An [~~Any~~] affected facility shall be exempt from the provisions of Section 3 of this administrative regulation if the monthly [~~annual~~] throughput is less than or equal to 10,000 per month. [~~120,000 gal.~~]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended administrative regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing, Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendments to this regulation have been made to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990; to delete obsolete language; and to comply with KRS Chapter 13A. No entities are affected by the deletion of obsolete language or KRS Chapter 13A changes. The applicability of this regulation is changed from urban nonattainment areas for ozone to all nonattainment areas for ozone except marginal. Gasoline service stations in Boone, Campbell, and Kenton counties were already under this regulation and are not, therefore, affected by the applicability change. Boyd county and portions of Bullitt, Greenup, and Oldham counties are now moderate nonattainment for ozone, and service stations in these areas will be impacted. A division survey indicates approximately 100 sources are potentially subject to this regulation for existing gasoline service stations commenced before June 6, 1979, or to 401 KAR 59:175 which has identical requirements for new gasoline service stations commenced on or after June 6, 1979. A breakdown of the early results of the survey of service stations indicated 35 in Boyd county, 15 in Greenup county, 22 in Oldham county, and 28 in Bullitt county as potentially affected. The survey does not indicate whether these sources were commenced before or after June 6, 1979.

(a) Direct and indirect costs or savings to those affected: The cost of implementing these requirements is included in and is a minor part of the cost of controls required by 401 KAR 63:035, Motor vehicle gasoline dispensing facilities. Please see the Regulatory Impact Analysis for 401 KAR 63:035.

1. First year: Please see (1)(a) above.

2. Continuing costs or savings: Please see (1)(a) above.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Some sources in nonattainment areas for ozone may be subject to regulation, while similar sources in attainment areas are not.

(b) Reporting and paperwork requirements: The paperwork to apply for a permit and records to demonstrate compliance are required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for newly affected sources. These costs will be covered by the division's approved budget.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this amendment contains the same provisions as the federal requirements.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation exempts service stations from controls if the annual throughput is less than or equal to 120,00 gallons.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Existing gasoline dispensing facilities with annual throughput greater than 120,000 gallons which are located in any nonattainment area for ozone except marginal.

3. State the aspect or service of local government to which this administrative regulation relates. This service of local government is internal for government vehicles. The gasoline dispensing facilities do not directly serve the public.

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 (+/-): There is no effect on revenues.

Expenditures (+/-): The amendment to this regulation expands the applicability. The sources already under this regulation will not be impacted by this amendment. The cost to newly affected sources is included in and is a minor part of the cost of controls required by 401 KAR 63:035, Motor vehicle gasoline dispensing facilities. Please see the Fiscal Note on Local Government and the Regulatory Impact Analysis for 401 KAR 63:035.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The applicability section of this regulation has been updated to be compatible with the Clean Air Act as amended on November 15, 1990.

2. State compliance standards. This amendment does not contain standards. This amendment changes the applicability of this regulation from urban nonattainment areas for ozone to all nonattainment areas for ozone except marginal.

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act as amended on November 15, 1990, requires that this regulation apply to all nonattainment areas for ozone except marginal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendment makes the applicability the same as required in the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment is not stricter or different than required.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 63:031. Leaks from gasoline tank trucks.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of volatile organic compound emissions from leaks from gasoline tank trucks.

Section 1. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 63:001.

(1) "Affected facility" means a gasoline tank truck which loads at bulk terminals regulated by 401 KAR 59:099 or 401 KAR 61:055 or at bulk plants regulated by 401 KAR 59:101 or 401 KAR 61:056.

(2) "Bulk gasoline plant" or "bulk plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, or other mobile nonmarine vessels for both incoming and outgoing gasoline transfer operations.

(3) "Bulk gasoline terminal" or "bulk terminal" means a gasoline facility which receives gasoline by pipeline, ship, or barge, and has a gasoline throughput greater than 75,700 liters per day.

(4) "Gasoline" means a petroleum distillate or petroleum distillate-alcohol blend having a Reid vapor pressure of four (4) pounds per square inch or greater which is used as a fuel for internal combustion engines.

(5) "Gasoline tank truck" or "tank truck" means a delivery tank truck used at bulk gasoline terminals or bulk gasoline plants which is loading gasoline or which has loaded gasoline on the immediately previous load.

(6) "Kentucky pressure-vacuum test sticker" or "sticker" means a compliance sticker issued annually by the cabinet in accordance with Section 5 of this administrative regulation to the owner or operator of a gasoline tank truck subject to this administrative regulation or which may be issued by a local air pollution control district within the Commonwealth of Kentucky with an equivalent administrative regulation approved by the cabinet and the U.S. EPA.

(7) "LEL" means lower explosive limit, measured as propane.

(8) "Vapor collection system" means equipment used for containing total organic compounds vapors displaced during the loading of gasoline tank trucks.

Section 2. Applicability. (1) This administrative regulation shall apply to each affected facility which loads gasoline on or after the effective date of this administrative regulation in a county or portion of a county designated ozone nonattainment, for any nonattainment classification except marginal under 401 KAR 51:010.

(2) This administrative regulation shall not apply to affected facilities which are subject to the equivalent regulations of a local air pollution control district within the Commonwealth of Kentucky which have been approved by the cabinet and the U.S. EPA.

~~[Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility which loads gasoline on or after December 1, 1982 in urban counties designated nonattainment for ozone under 401 KAR 51:010.~~

~~(2) The provisions of this regulation shall not apply to affected facilities which are subject to the regulations of a local air pollution control district within the Commonwealth of Kentucky which have been approved by the cabinet and the U.S. EPA.~~

~~Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010, 401 KAR 61:055, and 401 KAR 61:056.~~

~~(1) "Affected facility" means gasoline tank trucks which load at bulk terminals regulated by 401 KAR 59:100 or 401 KAR 61:055 or bulk plants regulated by 401 KAR 59:101 or 401 KAR 61:056.~~

~~(2) "LEL" means lower explosive limit, measured as propane.~~

~~(3) "Kentucky pressure vacuum test sticker" means a sticker which is issued each year by the cabinet, in accordance with the provisions of Section 5 of this regulation, to the owner or operator of a gasoline tank truck subject to this regulation or which may be issued by a local air pollution control district within the Commonwealth of Kentucky with an equivalent regulation approved by the cabinet and the U.S. EPA. This sticker indicates the compliance of the gasoline tank truck with the standard in Section 3(1) of this regulation or compliance with a program determined equivalent by the cabinet but administered by another state in which the gasoline tank truck is based.]~~

Section 3. Standard for Volatile Organic Compounds. (1) No owner or operator of a gasoline tank truck subject to this administrative regulation shall allow loading unless the [~~gasoline tank~~] truck displays [~~has~~] a valid [~~Kentucky pressure vacuum test~~] sticker [~~attached and visibly displayed~~]. The sticker shall be attached to the tank, shall be located near the U.S. Department of Transportation certification plate, and shall be clearly visible. This sticker shall indicate[s] that the gasoline tank truck and its vapor collection system have been tested as having a pressure change of no more than seventy-five (75) mm water (three (3) in. water) in five (5) minutes when pressurized to 450 mm water (eighteen (18) in. water) and evacuated to 150 mm water (six (6) in. water) using the test procedure [~~referenced~~] in Section 4(1) of this administrative regulation. ~~[The sticker shall be attached to the tank, located near the Department of Transportation Certification plate, and clearly visible.]~~

(2) During loading operations at regulated bulk plants and bulk terminals, there shall be no reading greater than or equal to 100 percent of the [~~lower explosive limit (~~]LEL[~~, measured as propane)~~] at a distance of two and five-tenths (2.5) centimeters around the perimeter of a potential leak source associated with the gasoline tank truck or its vapor collection system as detected by a combustible gas detector using the test procedure [~~referenced~~] in Section 4(2) of this administrative regulation.

(3) During loading at bulk plants and bulk terminals, there shall be no visible liquid leaks. Drops of liquid resulting from the disconnection of dry breaks in well-maintained liquid lines shall be allowed.

Section 4. Compliance. (1) Method 27, "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test", specified in 40 CFR 60, Appendix A, July 1, 1991, and incorporated by reference in 401 KAR 50:015, or an alternate procedure approved by the cabinet, shall be used to determine compliance with Section 3(1) of this administrative regulation. ~~[The test procedure as defined in Appendix A to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an alternate procedure approved by the cabinet shall be used to determine compliance with the standard prescribed in Section 3(1) of this regulation.]~~ The owner or operator of the tank truck shall have the tank truck tested annually and shall maintain records of test data, date of testing, identification of tank truck, type of repair, retest data and date. Records shall be maintained by the owner or operator for two (2) years after the date of testing and shall be made available upon request by the cabinet.

(2) The test procedure [~~as defined~~] in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), incorporated [~~filed~~] by reference in 401 KAR 50:015, or an equivalent procedure approved by the cabinet, shall be used by the cabinet to determine compliance with [~~the standard prescribed in~~] Section 3(2) of this administrative regulation during inspections [~~conducted pursuant to KRS 224.10-100(10)~~]. Trucks with leaks greater than or equal to 100 percent of the LEL shall be repaired and shall meet the pressure and vacuum standard described in Section 3(1) of this administrative regulation within fifteen (15) days.

Section 5. Sticker Application and Fee. (1) The owner or operator of a gasoline tank truck subject to this administrative regulation shall apply annually to the cabinet [~~each year~~] for a sticker. Applications shall be made on form DEP-6020, Gasoline Tank Truck Pressure-Vacuum Test Certificate Application, which is incorporated by reference in Section 6 of this administrative regulation. ~~[forms prepared by the cabinet for such purpose.]~~

(2) The completed application shall include [~~a copy of~~] the test results demonstrating compliance with Section 3(1) of this administrative regulation. Applications shall be signed by the corporate president or by another [~~duly~~] authorized agent of the corporation; or by an equivalently responsible officer [~~in the case~~] of organizations other than corporations; or, in other cases, by the source owner or operator; or, for [~~in the case of~~] political subdivisions, by the highest executive or official of the [~~such~~] subdivision. The [~~Such~~] signature shall constitute personal affirmation that the statements made in the application are true and complete. Failure to supply information required [~~or deemed necessary~~] by the cabinet shall result in denial of the application. The cabinet shall deny an application if the applicant willfully makes material misstatements in the application.

(3) The [~~(2) Any~~] owner or operator [~~who submits an application for a sticker~~] shall include with the application for the sticker a certified check or money order in the amount of the sticker fee assessed by the cabinet, payable to the Kentucky State Treasurer. The sticker fee for each gasoline tank truck is ten (10) dollars per year. The provisions of 401 KAR 50:035 [~~and 401 KAR 50:036~~] shall not apply to the owner or operator of a gasoline tank truck subject to

this administrative regulation. Sticker fees are not refundable if a sticker is denied or an application is withdrawn. Fees are payable at the time of application.

(4) Determination and notifications.

(a) Within fifteen (15) working days after receipt of an application, the cabinet shall advise the owner or operator if the application is not complete, and if additional information is necessary in order to evaluate the application.

(b) The cabinet shall make its determination concerning the application including its approval, or reasons for denial of the sticker application within thirty (30) days after receipt of a complete application.

(5) If the owner or operator of a gasoline tank truck displays a valid sticker which was issued under a previous version of this administrative regulation, that sticker shall remain valid for one (1) year from the effective date of the sticker.

(6) If the attainment designations of an area changes pursuant to 401 KAR 51:010 so that an affected facility becomes subject to this regulation for the first time, the affected facility shall have four (4) months from the effective date of the redesignation to comply with this administrative regulation.

(7) The owner or operator of a gasoline tank truck in compliance with a program determined by the cabinet to be equivalent to the standards in Section 3 of this administrative regulation but administered by another state in which the gasoline tank truck is based shall annually obtain a sticker in accordance with Section 5 of this administrative regulation.

(8) The [~~(3)~~] provisions of subsection (3) [~~(2)~~] of this section shall not apply to publicly owned affected facilities.

Section 6. Forms Required Under this Administrative Regulation. (1) The following form required to be submitted by regulated entities is incorporated by reference: DEP-6020, Gasoline Tank Truck Pressure-Vacuum Test Certificate Application.

(2) Copies of the form DEP-6020, Gasoline Tank Truck Pressure-Vacuum Test Certificate Application, are available at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended administrative regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five (5) days prior to the hearing, Kenneth M. Hines, Manager, Program Planning and Administration Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1)Type and number of entities affected: This administrative regulation affects gasoline tank trucks operating in areas previously designated "urban" ozone nonattainment. It is being amended to apply to tank trucks operating in any area designated nonattainment for ozone for any designation except marginal. This amendment will cause tank trucks operating in the "moderate" ozone nonattainment areas of Boyd County and portions of Bullitt, Greenup, and Oldham counties to become subject to this administrative regulation for the first time. Tank trucks operating in the ozone nonattainment areas of Northern Kentucky and Jefferson County are already subject to this administrative regulation. The number of gasoline tank trucks affected will vary, depending on the number of trucks operating in the newly redesignated nonattainment areas. This administrative regulation is also being amended to delete an outdated test method (Appendix A to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, OAQPS 1.2-119) and to replace it with the appropriate method, Method 27, "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," specified in the federal mandate. Numerous minor text changes have been made in this administrative regulation to bring it into compliance with the requirements of KRS Chapter 13A.

(a) Direct and indirect costs or savings to those affected: The are no costs or savings associated with the KRS 13A amendments.

1. First year: There will be a slight increase in cost to the tank truck operators who are already subject to this administrative regulation because of the change in test methods. For tank truck operators who are subject to this administrative regulation for the first time, additional operating costs to meet the requirements of this regulation will include the costs for having the leak tests performed, costs of necessary repairs, and the sticker application fee.

2. Continuing costs or savings: On an annual basis, tank truck operators will continue to have the expense of having the required leak tests performed, the costs of any necessary repairs, and the annual sticker application fee.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no known additional costs to affected sources as a result of this amendment.

(b) Reporting and paperwork requirements: The owner or operator of the gasoline tank truck must apply annually for a pressure vacuum test certification sticker and must display the sticker on the truck at all times.

(2) Effects on the promulgating administrative body: Because of the addition of new nonattainment counties or portions of counties, the cabinet expects an increase in staff activity to collect and maintain test data and to issue stickers that will allow the trucks to operate in Kentucky.

(a) Direct and indirect costs or savings: The cabinet will experience increased costs for staff activity and for office equipment needed to access data.

1. First year: Costs for a computer, increased staff time devoted to issuing stickers and maintaining records, increased cost of stickers, and increased postage costs will occur because of an anticipated increase in the number of gasoline trucks operating in ozone nonattainment areas and of trucks applying for certification for the first time in areas which currently are not subject to this administrative regulation.

2. Continuing costs or savings: First year costs, except for the cost of the computer, will be carried forward based on program growth.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing cost.

(b) Reporting and paperwork requirements: There are no additional reports. Paperwork will increase based on the number of trucks operating in Kentucky's newly designated moderate ozone

nonattainment counties.

(3) Assessment of anticipated effect on state and local revenues: No significant effects on state and local revenues are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered because the method adopted in this amendment (Method 27) is the same method required in the federal mandate.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no requirements that overlap or duplicate this administrative regulation or that are in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: This administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet has no additional comments.

TIERING: Was tiering applied? Yes. This administrative regulation applies to testing procedures for gasoline tank trucks loading at bulk terminals in all ozone nonattainment areas, except marginal.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 60, Subpart XX, mandates that documentation for each gasoline tank truck be annually updated to reflect current test results as determined by Method 27, "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test."

2. State compliance standards. This amendment makes the state's compliance standards identical to the federal mandate.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 60.502 requires the owner or operator of a gasoline tank truck operating in an ozone nonattainment area to obtain vapor tightness documentation as determined by Method 27, "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" for trucks to be loaded at bulk facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation makes Kentucky's test method requirements identical to the federal mandate. The cabinet uses the sticker certification system to meet the reporting requirements for each bulk terminal specified in 40 CFR 60, Subpart XX.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The certification sticker provides constantly-displayed evidence to the bulk terminal operator and to the general public that the gasoline tank truck is operating according to the VOC emissions requirements of the cabinet.

JUSTICE CABINET
Office of the Secretary
(Proposed Amendment)

500 KAR 1:010. Definitions.

RELATES TO: KRS 61.315
STATUTORY AUTHORITY: KRS 61.315(4)
NECESSITY AND FUNCTION: This regulation provides the definitions of certain terms used in 500 KAR Chapter 1 which pertain to criteria and procedures applicable to the administration of benefits paid on death of police officers who have died in the line of duty, as required by KRS 61.315(4) to be promulgated by the Justice Cabinet.

Section 1. Definitions. The following definitions shall apply in this chapter:

(1) "Secretary" means the Secretary of the Justice Cabinet.

(2) "Cabinet" means the Justice Cabinet.

(3) "Police officer" means every paid [~~full-time~~] police officer, sheriff or deputy sheriff [~~who works not less than forty (40) hours per week~~], or any auxiliary police officer appointed pursuant to KRS 95.445, or any citation or safety officer appointed pursuant to KRS Chapter 83A, elected to office or employed by any Kentucky county or city, or by the state, or by an airport board created pursuant to KRS Chapter 183, or any member of the Kentucky National Guard on state active duty pursuant to KRS 38.030.

(4) "Claimant" means spouse, child or parent who files a claim for death benefits pursuant to KRS 61.315 with the Justice Cabinet. [~~"Full time" means a "police officer" as defined in subsection (3) of this section who is a salaried and duly sworn officer of a statutorily and lawfully organized police department for a city, county, airport board created pursuant to KRS Chapter 183 or Commonwealth of Kentucky or sheriff's office of Kentucky and is working an approved forty (40) hour week or as approved according to a uniform weekly schedule that is standard for police officers employed by the employing county, city, and airport board or state agency or sheriff's office and who is responsible for the prevention and detection of crime and the enforcement generally of the criminal laws and traffic laws of Kentucky for the general public.~~]

(5) "Spouse" means the lawfully wedded husband or wife of the deceased police officer living at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason or a spouse involved in divorce proceedings if a final divorce decree has not been entered.

(6) "Children" means any natural, adopted or posthumous child or child born out of wedlock of the deceased police officer who, at the time of the officer's death is[~~:~~] living[~~,~~] or later is born alive.

(7) "[~~Dependent~~] Parent" means a [~~living,~~] natural or adoptive parent of the police officer living [~~who,~~] at the time of the police officer's death[~~, was regularly dependent for support upon the income of the officer for the parent's support in the nature of food, shelter, clothing, medical expenses and other ordinary and customary items for maintenance of the parent supported for a substantial period of time~~].

(8) "Death as a direct result of an act" means that the antecedent act, omission to act or event inflicted upon the police officer was the substantial factor in the result of the police officer's death.

(9) "Death" means the immediate death of the police officer from an act in the line of duty that resulted in his death, as well as a traumatic injury, wound, condition of the body or disease resulting therefrom or medical attention therefor that directly causes the death of the officer [~~within one (1) year from an act in the line of duty that resulted in his death~~].

(10) "Act in the line of duty" means an act or omission to act by the police officer or event involving the police officer or external force upon the police officer while the officer is engaged in any action or duty which the officer is obligated or authorized by rule, regulation, condition of employment or service, or law to perform for [~~, and for which the officer is compensated by~~] the public agency or office the police officer serves. Specifically, an act is not in the line of duty if the death was caused by:

(a) A non work-related disease or condition or a routine work-related disease or condition common to [~~commonly regarded as a concomitant of~~] the officer's occupation;

(b) Intentional misconduct of the police officer;

(c) The police officer's intention to bring about his death;

(d) The police officer's willfulness or wanton disregard that [~~to~~] brings about his death;

(e) [~~If~~] Voluntary intoxication of the police officer which is [~~was~~] a contributing factor [~~cause~~] of the death; or

(f) If the actions or omissions of the beneficiary was a substantial factor in [~~to~~] the death of the police officer, recovery being precluded

as to that beneficiary only.

(11) "Office of the Secretary" as used herein means the person designated by the secretary of the cabinet to receive, process and make eligibility determinations on claims for benefits to be paid on death of a police officer pursuant to KRS 61.315. The address of the Office of the Secretary for filing claims is: Office of the Secretary, Justice Cabinet, Death Benefits Administrator, 403 Wapping Street, Bush Building, 2nd Floor, [~~Claim Adjuster, Commonwealth Credit Union Building, 417 High Street, 3rd Floor,~~] Frankfort, Kentucky 40601.

[~~(12) "Auxiliary police officer" means a duly and lawfully appointed auxiliary police officer appointed pursuant to KRS 95.445 pursuant to an ordinance by a legislative body of a city of the second, third, fourth, fifth, or sixth class or urban county government, except a city of the fifth or sixth class in a county containing a first class city.~~]

BILLY G. WELLMAN, Secretary

APPROVED BY AGENCY: October 6, 1992

FILED WITH LRC: October 7, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 23, 1992, at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 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 by November 18, 1992. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lucy B. Richardson, Deputy General Counsel, Justice Cabinet, 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky 40601, (502) 564-3279.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson

(1) Type and number of entities affected: All police officers and national guard members.

(a) Direct and indirect costs or savings to those affected: No cost or savings.

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: Justice Cabinet already engages in this reporting and paperwork.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

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: No additional paperwork.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives exist by statute.

(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. Regulation only applies to one class of affected people, i.e., survivors of police officers or national guard who die in the line of duty.

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. Police officer agencies.

3. State the aspect or service of local government to which this administrative regulation relates. Provides state paid death benefits to police officers who die in the line of duty.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE CABINET
Office of the Secretary
(Proposed Amendment)

500 KAR 1:020. Filing and processing of death benefit claims.

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(4)

NECESSITY AND FUNCTION: This regulation provides criteria and procedures applicable to filing and processing of death benefit claims for the proper administration of benefits legally required to be paid to the proper party or parties on the death of police officers who have died in the line of duty, as required by KRS 61.315(4) to be promulgated by the Justice Cabinet.

Section 1. Submission of Claim by Proper Party. Death benefit claims shall be filed with the office of the secretary of the cabinet who shall determine [~~who is~~] the proper party or parties to submit a claim for death benefits in accordance with the following requirements:

(1) The claim shall be submitted and executed by the claimant or the claimant's legally designated representative upon submission of written proof of such designation.

(2) If the claimant is under a disability in terms of mental or physical incapacity or as a result of being a minor, then the claim shall be submitted and executed by the claimant's legally appointed guardian, committee, trustee or other legal representative upon submission of written proof of such disability and proof of the legal authority of representation by means [~~in the nature~~] of affidavits, [~~and~~] certified court records, or other legal documents.

Section 2. Proof of Relationship. In filing the claim for death benefits the claimant or claimant's representative shall submit the following proof of relationship:

(1) If the claimant is a spouse of the police officer, the spouse shall submit proof of marriage in the form of a duly issued and certified marriage license or certificate, any other certified government or official report, or affidavit of the marriage officiant, [~~officiate~~] or affidavit of two (2) witnesses of the marriage. Such documentation presented shall establish the names of parties married and the date and place of marriage. if the claimant spouse or officer was previously married, certified divorce decrees of all previous marriages shall be

submitted.

(2) If the claimant is a child of the police officer, documentation of the relationship and age shall be provided in the form of certified official vital statistics records, adoption decrees, birth certificates, paternity decree, or other government agency records that reveal the age and relationship of the child with the deceased officer. Affidavits of two (2) disinterested credible witnesses or an affidavit of the officer prior to death may provide proof of the officer's recognition of the child as his natural or adopted child if none of the foregoing documentation is in existence.

(3) If the claimant is a [~~dependent~~] parent, proof of such relationship shall be provided in the form of certified vital statistics records, birth certificates, adoption decree or other official government records revealing the parental relationship. Affidavits of two (2) disinterested, credible witnesses may provide proof of the officer's recognition of the claimant as his parent if the foregoing documentation is not in existence.

[~~(4) If dependency is to be established as in the case of a dependent parent such dependency shall be documented and proven as follows:~~

~~(a) A sworn statement of dependency by the dependent parent or the deceased officer, if one was made; and~~

~~(b) Financial records or other records that reveal all sources of income and support available for the claimant for the twelve (12) months preceding the officer's death; and~~

~~(c) The amount of income and value of support derived from each source listed; and~~

~~(d) The nature of support provided by each source; and~~

~~(e) Other documents that may be deemed necessary.~~]

(4) [~~(5)~~] If the claimant is claiming through an auxiliary police officer appointed pursuant to KRS 95.445, the claimant shall provide the ordinance establishing the auxiliary police force and sufficient official records revealing whether the officer was appointed by the appropriate officials and whether the appointment was for a third, fourth, fifth or sixth class city or urban-county government, and whether a first class city is within the county wherein the auxiliary police officer was appointed.

Section 3. Proof of Death as a Direct Result of an Act in the Line of Duty. The claimant shall provide proof of death of the police officer as a direct result of an act in the line of duty by providing the following:

(1) A certified copy of the officer's death certificate; and

(2) Certified employment records substantiating the officer's paid [~~full time~~] status as required by statute [~~and regulation~~]; and

(3) A certified autopsy report, if requested by the cabinet, or other sworn medical evidence as to the cause of death, and a coroner's report or other formal investigative report, if made; and

(4) A certified investigative report prepared by the employing [~~police~~] agency [~~or sheriff's office~~] regarding the circumstances leading to the death.

(5) Other documents that may be deemed necessary by the office of the secretary.

Section 4. Filing the Claim. (1) In order to file a claim for benefits payable [~~paid~~] on death of a police officer, the claimant shall file completed forms provided by the office of the secretary of the cabinet including the survivor's claim for death benefits and agency report of police officer's death along with the appropriate documentary proof as requested [~~herein provided for~~].

(2) The claim for death benefits shall be filed with [~~within~~] the office of the secretary six (6) months from the date of the death of the police officer for which the claim is made, unless the secretary extends the filing deadline for good cause shown by the claimant.

(3) The office of the secretary may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(4) Whenever a claimant for benefits herein has submitted no evidence or insufficient evidence of any material issue or fact, the office of the secretary shall inform the claimant what evidence is required for a determination as to such issue or fact and [~~shall~~] request that the claimant [~~to~~] submit such evidence within forty-five (45) days from the date of the request of the office of the secretary.

(5) The claimant's failure to submit evidence on a material issue or fact as requested by the office of the secretary shall be a basis for determining that the claimant fails to satisfy the conditions required to award death benefits to the claimant.

(6) After the claim has been filed and the office of the secretary determines the claimant has submitted (or failed to submit) all reports, documents and[~~/or~~] evidence required to be submitted, the office of the secretary shall render a decision on the claim within forty-five (45) days.

(7) A claim for benefits may be withdrawn at any time upon written notice to the secretary signed by the claimant or claimant's representative.

(8) Upon making a finding of eligibility, the office of the secretary shall, in writing, notify the claimant at claimant's last known address of its disposition of the claim. Payment shall be made to the claimant as soon thereafter as practicable, with the Justice Cabinet presenting the claim to the State Treasurer [~~Finance Cabinet~~] within five (5) working days.

(9) In those cases where the office of the secretary has found the claimant ineligible for a death benefit, the office of the secretary shall notify the claimant in writing at claimant's last known address of its disposition and shall set forth findings of fact and conclusions of law supporting the decision, as well as claimant's right to a hearing and review by the secretary.

Section 5. Priority and Amount of Claim Benefits. Upon final determination of eligibility for benefits, the benefits are to be paid in the manner as follows:

(1) $50,000 [~~25,000~~] to the surviving spouse of the police officer who died; or

(2) If the police officer has no surviving spouse, then $50,000 [~~25,000~~] to the surviving children, divided in equal portions according to the number of surviving children; provided, however, if the surviving children are less than eighteen (18) years of age, and there is no surviving custodial spouse, the state treasurer shall:

(a) Pay two-fifths (2/5) of the amount entitled [~~$10,000~~] to the surviving children in equal amounts; and

(b) Hold three-fifths (3/5) of the amount entitled [~~$15,000~~] in trust divided into equal accounts at appropriate interest rates for each surviving child until such child reaches the age of eighteen (18) years. If a child dies before reaching the age of eighteen (18) years, his account shall be paid to his estate; or

(3) If the police officer who died has no surviving spouse or surviving children, then $50,000 [~~25,000~~] to the surviving [~~dependent~~] parents of the police officer, divided in equal portions according to the number of surviving [~~dependent~~] parents of the police officer.

BILLY G. WELLMAN, Secretary

APPROVED BY AGENCY: October 6, 1992

FILED WITH LRC: October 7, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 23, 1992, at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 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 by November 18, 1992. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lucy B. Richardson, Deputy General Counsel, Justice Cabinet, 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky 40601, (502) 564-3279.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson

(1) Type and number of entities affected: All police officers and national guard members.

(a) Direct and indirect costs or savings to those affected: No cost or savings.

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: Justice Cabinet already engages in this reporting and paperwork.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

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: No additional paperwork.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives exist by statute.

(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. Regulation only applies to one class of affected people, i.e., survivors of police officers or national guard who die in the line of duty.

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. Police officer agencies.

3. State the aspect or service of local government to which this administrative regulation relates. Provides state paid death benefits to police officers who die in the line of duty.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE CABINET
Office of the Secretary
(Proposed Amendment)

500 KAR 1:030. Request for hearing.

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(4)

NECESSITY AND FUNCTION: This regulation provides the procedures applicable to a claimant who desires to request a hearing concerning claimant's eligibility for benefits paid on death of a police officer who has died in the line of duty pursuant to KRS 61.315(4).

Section 1. Administrative Review. (1) A claimant may, within thirty (30) days after notification of ineligibility by the office of the secretary, request hearing before the secretary to review the claimant's request for death benefits. A request for a hearing shall be filed in writing with the office of the secretary within thirty (30) days of the date of the notice of ineligibility and shall set forth the exceptions taken to the initial determination of ineligibility.

(2) The hearing shall be held within sixty (60) days of receipt of the request for a hearing and shall be conducted by the secretary or the secretary's designated hearing officer. If a hearing officer conducts the hearing, the hearing officer shall submit findings of fact, conclusions of law and a recommended decision to the secretary. The hearing shall be held at a time and place designated by the secretary or the designated hearing officer with written notice being sent to the claimant and the cabinet's representative, if any.

(3) The hearing shall provide the claimant and the cabinet's representative, if any, with an opportunity to be heard publicly, to be represented by counsel, to put on proof by sworn witnesses, certified records, affidavits, exhibits or other evidence as the hearing officer or secretary may determine to be required or useful in evaluating the claim. The claimant shall have the opportunity to cross-examine or rebut adverse testimony or evidence. The hearing shall be recorded and the original of the complete transcript shall be made a part of the claims record at claimant's cost, if requested by the claimant to be transcribed.

(4) Failure of the claimant or claimant's representative to appear at the hearing shall be deemed an abandonment of the claimant's request for a review of the [~~hearing and concomitant~~] decision adverse to the claimant's request for benefits unless within ten (10) days of the hearing good cause is shown to the secretary or the hearing officer for failure to appear by means of affidavit filed with the secretary.

(5) The secretary or hearing officer designated may, whenever necessary, administer oaths, examine witnesses or continue the hearing to facilitate the receipt of evidence.

(6) The claimant shall bear the burden of proof by substantial, reliable and probative evidence.

(7) No payment of any portion of a death benefit shall be made until all determinations, hearings and reviews which may affect that payment have been completed.

(8) In conducting the hearing, the secretary or hearing officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedures, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant. The secretary or hearing officer may additionally schedule a prehearing conference upon its own motion or motion of the party to consider such matters that will aid in the simplification of the hearing or avoidance of costly or unnecessary proof or manner for presenting proof.

(9) Within sixty (60) days following the hearing, the secretary shall issue a written opinion, containing findings of facts and conclusions of law to support the decision. A copy of the decision shall be provided to all parties at their last known address. The decision of the secretary shall be the final decision of the cabinet.

(10) Upon a favorable decision to claimant, which has become final, payment shall be made to the claimant as soon thereafter as practicable, with the Justice Cabinet presenting the claim to the State Treasurer [~~Finance Cabinet~~] within five (5) working days.

BILLY G. WELLMAN, Secretary
APPROVED BY AGENCY: October 6, 1992
FILED WITH LRC: October 7, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 23, 1992, at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 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 by November 18, 1992. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lucy B. Richardson, Deputy General Counsel, Justice Cabinet, 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky 40601, (502) 564-3279.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson
(1) Type and number of entities affected: All police officers and national guard members.
(a) Direct and indirect costs or savings to those affected: No cost or savings.
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: Justice Cabinet already engages in this reporting and paperwork.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
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: No additional paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives exist by statute.
(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. Regulation only applies to one class of affected people, i.e., survivors of police officers or national guard who die in the line of duty.

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. Police officer agencies.
3. State the aspect or service of local government to which this administrative regulation relates. Provides state paid death benefits to police officers who die in the line of duty.
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 (+/-): None
Expenditures (+/-): None
Other Explanation:

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 October [~~September~~] 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
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 (Deleted 10/15/92)]~~
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 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access (Amended 10/15/92)
KSR 10-01-11	Unit D - Behavior Problem Control (Amended 10/15/92)
~~[KSR 10-00-12~~	~~Unit D - Designated Staff Visits (Deleted 10/15/92)]~~
KSR 10-00-13	Unit D - Property Room Access (Amended 10/15/92)
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records (Amended 10/15/92)
KSR 10-01-02	Unit D - General Operational Procedures (Amended 10/15/92)
KSR 10-01-03	Unit D - Inmate Tracking System and Records System (Amended 10/15/92)
KSR 10-01-04	Unit D - Administrative Segregation (Amended 10/15/92)
KSR 10-01-05	Unit D - Disciplinary Segregation (Amended 10/15/92)
KSR 10-01-06	Unit D - Protective Custody (Amended 10/15/92)
KSR 10-01-07	Unit D - Geriatrics (Amended 10/15/92)
KSR 10-01-08	Unit D - Safekeepers (Amended 10/15/92)
KSR 10-01-09	Unit D - Hold Ticket Residents (Amended 10/15/92)
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)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement [~~(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
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 17-00-05	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: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 25, 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: 556 employees of the Kentucky State Reformatory, 1393 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 to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department 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 the following policies and procedures are incorporated by reference on October [~~September~~] 15, 1992 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, 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 (Amended 10/15/92)
BCC 02-02-01	Fiscal Responsibility (Amended 10/15/92)
BCC 02-02-02	Fiscal Management: Accounting Procedures (Amended 10/15/92)
BCC 02-02-03	Fiscal Management: Checks (Amended 10/15/92)
BCC 02-02-04	Fiscal Management: Budget (Amended 10/15/92)
BCC 02-02-05	Fiscal Management: Insurance (Amended 10/15/92)
BCC 02-02-06	Fiscal Management: Audits (Amended 10/15/92)
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract (Amended 10/15/92)
BCC 02-05-01	Property Inventory (Amended 10/15/92)
BCC 02-06-01	Purchasing (Amended 10/15/92)
BCC 02-07-01	Inmate Personal Accounts (Amended 10/15/92)
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
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
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
BCC 16-03-01	Inmate Packages
BCC 16-03-02	Outgoing Inmate Packages
BCC 16-03-03	Inmate Correspondence
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
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
BCC 20-02-01	College Programs
BCC 20-04-01	Educational Program Evaluation
BCC 20-05-01	Educational Program Planning
BCC 20-06-01	Academic and Vocational Curriculum
BCC 21-01-01	Library Services
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
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
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: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 25, 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: 96 employees of the Blackburn Correctional Complex, 388 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 6:130. Western Kentucky Correctional Complex.

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 15 [~~June 15~~], 1992 are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, 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.

WKCC 01-09-01 Duty Officers, External and Internal Inspections, and Staff Tours
WKCC 02-01-01 Inmate Funds [~~(Revised 6/15/92)~~]
WKCC 02-01-02 Inmate Canteen
WKCC 02-00-03 Invoice and Voucher Processing
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06 Purchasing Procedures
WKCC 02-01-01 Inmate Funds
WKCC 02-02-01 Agency Funds and Accounting Procedures
WKCC 02-08-01 Property Receipt and Inventory Procedures
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01 Employee Training and Development
WKCC 04-04-01 Educational Assistance Program
WKCC 05-01-01 Research, Consultants, and Student Interns
WKCC 06-00-01 Offender Records and Information Access (Amended 10/15/92)
WKCC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc. (Amended 10/15/92)
WKCC 09-00-01 Drug Abuse and Alcohol Testing (Amended 10/15/92)
WKCC 10-02-01 Special Management Inmates
WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04 Food Service Security
WKCC 11-00-05 Food Service General Guidelines
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01 Inmate Clothing [~~(Revised 6/15/92)~~]
WKCC 13-00-01 Special Health Programs
WKCC 13-01-01 Use of Pharmaceutical Products
WKCC 13-02-01 Health Care Services
WKCC 14-04-01 Legal Services Program [~~(Revised 6/15/92)~~]
WKCC 14-06-01 Inmate Grievance Procedure
WKCC 15-01-01 Hair and Grooming Standards
WKCC 15-02-01 Inmate Offenses and Penalties
WKCC 15-03-01 Meritorious Good Time
WKCC 15-05-01 Restoration of Forfeited Good Time
WKCC 16-01-01 Visiting Policy and Procedures
WKCC 16-02-01 Inmate Correspondence
WKCC 16-03-01 Inmate Access to Telephones
WKCC 16-04-01 Inmate Packages [~~(Revised 6/15/92)~~]
WKCC 17-01-01 Inmate Personal Property [~~(Revised 6/15/92)~~]
WKCC 17-02-01 Inmate Reception and Orientation
WKCC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee [~~(Revised 6/15/92)~~]
WKCC 20-01-01 Education Program (Added 10/15/92)
[~~WKCC 20-03-01 Vocational Education Program (Deleted 10/15/92)~~]
[~~WKCC 20-04-01 Academic Education Program (Deleted 10/15/92)~~]

WKCC 22-00-01 Inmate Recreation and Leisure Time Activities (Amended 10/15/92)
WKCC 22-00-02 Inmate Clubs and Organizations
WKCC 23-00-01 Religious Services (Amended 10/15/92)
WKCC 25-02-01 Inmate Release Process
WKCC 25-03-01 Prerelease Programs (Amended 10/15/92)
~~[WKCC 26-01-01 Volunteer Services Program (Deleted 10/15/92)]~~

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 25, 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, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 147 employees of the Western Kentucky Correctional Complex, 410 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.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23
STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23
NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.
(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.
(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.
(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.
(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.
(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.
(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:
(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and
(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.
(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.

(13) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet has a rebuttable presumption that individuals listed in the groups below are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(14) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. 49 CFR 23 effective June 1, 1992 [~~May 23, 1988~~] is adopted without change. This regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3 [~~on forms prescribed and furnished by the Transportation Cabinet~~]. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall identify his position with the business enterprise applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an on-site inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

(6) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. Its telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1) The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE. The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE. To be certified a firm shall perform a commercially useful function as set forth in 49 CFR Part 23.47.

(2) The Office of Minority Affairs shall issue a determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE or WBE is approved by the Transportation Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Office of Minority Affairs is evaluating the application, the notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE or WBE.

(2) Certification as a DBE, MBE or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration a certified DBE, MBE or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and require the same information as in Section 3 of this administrative regulation except that beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date of the notice if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current 8(a) certification from the Small Business Administration, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This terminates the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 8 and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing. The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE or WBE program. Application for certification shall be on forms prescribed and furnished by the Transportation Cabinet. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet.

(3) If all firms involved in the joint venture are certified DBEs, MBEs or WBEs, there is no need for the joint venture to request certification.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective September 9, 1992 [~~July 2, 1990~~], is adopted without change. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than $15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1) management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky but which are within a seventy-five (75) mile proximity may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall provide an orientation program for all newly certified DBE firms. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under 600 KAR 1:100 or 603 KAR 2:015 to engage in highway

construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

MAURICE SWEENEY, Executive Director
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 22, 1992

FILED WITH LRC: October 8, 1992 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1992, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until November 18, 1992. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency contact: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(a) Direct and indirect costs or savings to those affected: The courses the certified or prequalified firms are required to attend are free of charge. Therefore, the firms only incur the cost of travel and personnel time. The cost to the firms is more than off-set by the knowledge and information the firm will gain and the aid it will receive in learning how to better manage its business, how state government operates and what the Transportation Cabinet expects of a certified firm.

1. First year: The changes in this amendment will even out the costs and savings.

2. Continuing cost or savings: Proper business management techniques will result in a long-term savings to these certified firms.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): All of the certified firms fall under the federal definition of a small business. These courses should help the firms become more competitive with the larger firms offering the same services.

(b) Reporting and paperwork requirements: None as a result of the amendment to the administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet has been offering the courses to certified or prequalified firms through an outside consultant for some time. The benefits to the programs have been such that the decision was made to make them mandatory. The U.S. Department of Transportation provides a grant to the Transportation Cabinet of over $100,000 each year to provide these types of services to the certified firms.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Continuing the programs on a voluntary basis was rejected because of the benefits to the firms which had attended oneof the programs in the past. Mandatory attendance will force all certified firms to evaluate the way they do business.

(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? Yes. Tiering was applied in that the management program must be attended only if the firm is certified and prequalified. If only certified but not prequalified to do work for the Transportation Cabinet, the firm does not have to attend the management training course.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the U.S. Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. This management program has received federal approval.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

RELATES TO: KRS Chapters 96A, 174, 176, 177 183
STATUTORY AUTHORITY: KRS 13A.120, 174.080
NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a

program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE or WBE subcontractors who are certified in accordance with 600 KAR 4:010.

(3) Any contractor who bids on and is the apparent successful competitor for ~~[such]~~ a project with established DBE participation goals shall be responsible for meeting the goals for participation of certified DBE, MBE or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE or WBE subcontractor participation information.

Section 3. Prime Contractor Guidelines. (1) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE or WBE subcontractors, he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways. The agreement shall be signed and notarized by both parties to the agreement. The agreement shall set forth a description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied; the unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and the total dollar value of the subcontract. All of these agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky and have completed the orientation program required by 600 KAR 4:010, Section 15 and are eligible to act as a certified DBE, MBE, or WBE.

(2) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count expenditures for materials and supplies obtained from certified DBE, MBE or WBE suppliers and manufacturers, provided the DBE, MBE or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to certified MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count only expenditures to certified DBEs, MBEs or WBEs that perform a commercially useful function in the work of a contract. A DBE, MBE or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine if a DBE, MBE or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its certified DBE, MBE or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project

and fails to demonstrate sufficient good faith efforts as set forth in Section 5 [6] of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor shall [~~should~~] not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE or WBE percentage participation of the contract.

(8) If the prime contractor's subcontract is cancelled, he shall replace the approved DBE, MBE or WBE with another certified DBE, MBE or WBE firm. An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs. The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE or WBE beginning work on the project. If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE or WBE subcontractor;

(b) Use of the approved DBE, MBE or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include but are not limited to the following:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's supportive services contractor for assistance in identifying DBE, MBE or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified and has attended a Transportation Cabinet orientation program under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE or WBE goal.

(2) At least fifty (50) percent of the work outlined in the subcontract shall be performed by the DBE, MBE or WBE subcontractor's work force [~~shall perform the work outlined in the subcontract~~].

(3) Second tier subcontracting by a DBE, MBE or WBE subcontractor may only be accomplished if the proposed second tier subcontractor is a certified DBE, MBE or WBE and the Office of Minority Affairs has reviewed and approved the second tier DBE, MBE or WBE subcontract prior to execution.

(4) A DBE, MBE or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE or WBE as Contractor. Nothing in this administrative regulation shall be construed so as to prohibit a DBE, MBE or WBE from competing on a project in the role of prime contractor.

Section 8. DBE, MBE or WBE Noncompliance. (1) If any certified DBE, MBE or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of 600 KAR 4:010.

(4) If the Transportation Cabinet, Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 of 600 KAR 4:010.

(5) The effective date of the suspension shall be [~~is~~] thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of 600 KAR 4:010.

MAURICE SWEENEY, Executive Director
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 22, 1992

FILED WITH LRC: October 8, 1992 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1992, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until November 18, 1992. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency contact: Sandra G. Pullen

(1) Type and number of entities affected: 180 firms certified as a DBE, MBE or WBE by the Transportation Cabinet. Of those, 75 are also prequalified.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: 600 KAR 4:010 was amended and this administrative regulation also had to be for consistency.

(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: The two administrative regulations in 600 KAR Chapter 4 relate directly to each other as well as the federal program. When one has to be amended, it is usual for the other to require clarification.

Tiering: Was tiering applied? Yes. There are differing requirements for a prime and subcontractor. A prime contractor has more responsibilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the U.S. Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:010 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

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

address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. This management program has received federal approval.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation–certification of professional school personnel program approval.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028 [~~156.070~~], 161.030, 161.042

NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.028 [~~161.025~~] gives the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification~~] the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for approving and evaluating college, university and school district programs for the preparation of teachers and other professional school personnel [~~duty to develop and recommend policies and standards relating to teacher preparation and certification~~]; and KRS 161.030 rests the certification of teachers and other school personnel, [~~and~~] the approval of college and university preparation programs for teachers and other school personnel [~~teacher preparatory colleges and universities~~] and their curricula with the Education Professional Standards Board. KRS 161.042 gives the Education Professional Standards Board the authority to establish requirements for supervisory personnel for student teachers. [~~State Board of Education. This regulation, which has been reviewed and recommended by the Kentucky Council on Teacher Education and Certification, establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation–certification programs.~~]

Section 1. Pursuant to the statutory authority placed upon the Education Professional Standards Board [~~chief state school officer, the State Board for Elementary and Secondary Education, and the Kentucky Council on Teacher Education and Certification~~] under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised October 1992 [~~July, 1990~~]. A copy of this document can be inspected, copied and obtained from the Office of Teacher Education and Certification [~~Instruction, Department of Education~~], 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 8 a.m. - 4:30 p.m., Monday-Friday.

[~~Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation-certification for a new position shall be evaluated in writing by the office of the chief state school officer on the basis of the following criteria:~~

~~(1) There are compelling reasons for establishing a preparation certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for nonceritification alternatives.~~

~~(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation certification plan. The body of knowledge is sufficiently extensive for a program of preparation - twelve (12) semester hours of credit or more - rather than something that can be earned in miscellaneous noncredit experiences.~~

~~(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.~~

~~(4) There is a sufficient demand for the training for this position to warrant the development of preparation certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.~~

~~(5) The preparation certification requirement is cost effective in terms of the anticipated benefits to the local school distrnct.~~]

JANICE WEAVER, Chairman

APPROVED BY AGENCY: October 5, 1992

FILED WITH LRC: October 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 30, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 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 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. Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dianne Worthy

(1) Type and number of entities affected: 176 local school districts in which student teachers are assigned to supervising teachers and the teacher education institutions assigning the student teachers.

(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:

(a) Direct and indirect costs or savings: None

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: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: Required by HB 871.

(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. This regulation applies uniformly to all local school districts.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:165. Qualifications for professional school positions. [~~Newly created positions.~~]

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]

NECESSITY AND FUNCTION: KRS 161.020 requires appropriate certification for [~~each~~] professional education [~~school~~] position in Kentucky public schools; however, professional education [~~new~~] positions are established in the local school districts for which a corresponding certification is not issued. In [~~often created in advance of the establishment of a statewide certification program for the position.~~] this regulation [~~empowers~~] the Education Professional Standards Board identifies required [~~Superintendent of Public Instruction to determine interim~~] qualifications for such assignments [~~until such time as a certification program is designed for the position in question~~].

Section 1. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

(1) Kentucky certification for school superintendent;

(2) A bachelor's or advanced degree in business;

(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994. [~~The Superintendent of Public Instruction shall be authorized to determine the qualifications and certification requirements for positions in which no program of preparation certification has yet been established by the Kentucky State Board of Education.~~]

Section 2. Director of Districtwide Services. A director of districtwide services may qualify for this position on the basis of certification either as school superintendent, supervisor of instruction, school business administrator, or principal. This regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.

Section 3. Director of Federally Supported Programs. A director of federally supported programs may qualify for this position on the basis of certification either as school superintendent, supervisor of instruction, or school principal.

Section 4. Consultant. A consultant in elementary education, special education, or in an academic subject field may qualify for the position on the basis of the following:

(1) Master's degree or nondegree fifth-year program;

(2) Certification in the appropriate subject field or service area; and

(3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 5. Reading Program Consultant. A reading program consultant may qualify for the position on the basis of certification as a reading specialist.

Section 6. Gifted Education Coordinator. A gifted education coordinator may qualify for the position on the basis of the following:

(1) A master's degree or nondegree fifth-year program;

(2) A certificate endorsement for teacher of gifted education; and

(3) Three (3) years of teaching experience.

Section 7. Special Education Work Study Program Coordinator. A special education work study program coordinator may qualify for the position on the basis of certification as a teacher of exceptional children.

Section 8. Professional Development Coordinator. The professional development coordinator may qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 9. Instructional Television Coordinator. An instructional television coordinator may qualify for the position on the basis of certification for classroom teaching.

Section 10. Instructional Coordinator. The instructional coordinator may qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 11. School Health Coordinator. A school health coordinator may qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 12. Chapter I Remedial Mathematics. Teachers holding a valid early elementary certificate, grades K-4, may qualify for teaching mathematics in Chapter I programs in grades 5-8.

Section 13. Teachers for Alternative Schools. A classroom teacher in an alternative school may qualify on the basis of any certificate valid for classroom teaching.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: October 5, 1992

FILED WITH LRC: October 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 30, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 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 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. Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 176 local school districts and individuals in school assignments for which a specific certificate is not issued.

(a) Direct and indirect costs or savings to those affected: Costs to districts in recruiting qualified personnel and to individuals in meeting the specified qualifications.

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: Individuals seeking the identified positions will have to obtain and maintain certification. Employing districts must maintain records of qualification.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs to Office of Teacher Education and Certification related to certificate issuance, recordkeeping, and information dissemination.

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: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Specific certification for these assignments is unnecessary or is duplicative of other professional licenses.

(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. Qualification/certification requirements are uniformly applicable to all individuals, school districts, and institutions of higher education as appropriate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:210. Substitute teachers.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030, 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028 [~~156.070~~], 161.030, 161.100

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025, and 161.030~~] requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.100 provides for the issuance of emergency certificates [~~under specified circumstances~~]. This regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with other regular certificates and in comparison with emergency certificates.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and [~~State Board of Education~~] regulations of the Education Professional Standards Board to applicants who hold a valid statement of eligibility for a [~~particular type of~~] Kentucky teaching certificate [~~as provided in 704 KAR 20:045, Section 2(6) and (7),~~] or who have previously held any type of Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall be valid only for substitute teaching. [~~The certificate document shall show the type of preparation completed by the teacher and shall be valid for substitute teaching only within the grade levels covered by the validity of the certificate.~~] The Certificate for Substitute Teaching shall not be valid for continuous part-time employment for classroom teaching or as a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. Whenever substitute teachers must be employed to serve during the absence of the teacher of record for the position, priority in selection and employment shall be in accordance with the following order [~~given first to~~]:

(1) Teachers who hold appropriate regular certification corresponding to the grade level of the teaching assignment; [~~Teachers who hold regular certification for classroom teaching and teachers who hold the Certificate for Substitute Teaching, and if no teacher with such certification is available, then;~~]

(2) Teachers who hold regular certification for classroom teaching at any grade level;

(3) Teachers who hold the Certificate for Substitute Teaching;

(4) [~~(2)~~] Except as provided in subsection (5) [~~(3)~~] of this section, persons certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, shall [~~with such persons to~~] be called [~~in~~] according to the following descending order [~~of categories~~] relating to the amount of college hours completed[~~, but not necessarily according to the number of hours two (2) or more persons within the same category may have~~]:

(a) A Bachelor's degree, then;

(b) At least ninety-six (96) semester hours of college credit, then;

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit; [~~and then, relative to substitute vocational teachers only;~~]

(5) [~~(3) The provisions of 704 KAR 20:120, Sections 1(3) and (4) notwithstanding,~~] Persons certified on an emergency basis for substitute teaching in any health, technical, or industrial occupation with a minimum of [~~must have no less than~~] four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: October 5, 1992

FILED WITH LRC: October 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 30, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 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 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. Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 2,300 persons who will be issued the Certificate for Substitute Teaching every year.

(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: Each applicant is

required to file an application for teacher certification and upon approval, the corresponding teaching certificate is issued.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional cost.

2. Continuing costs or savings: No additional cost.

3. Additional factors increasing or decreasing costs: No direct costs.

(b) Reporting and paperwork requirements: Review and process applications and issue certificates to applicants who qualify, maintain appropriate records, and disseminate relevant information.

(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: No alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. Certification requirements are uniformly applicable to all individuals.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Proposed Amendment)

805 KAR 7:030. Annual retraining program.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.106

NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute.

Section 1. Annual Retraining Program. (1) All certified persons shall receive a minimum of sixteen (16) hours of annual retraining, at least eight (8) hours of which shall be administered in a classroom. The balance of such annual retraining may be administered in segments of not less than fifteen (15) minutes; the persons who receive annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement.

(2) The annual retraining [~~program~~] set forth in this regulation shall be administered to each certified person in the manner established in Section 2 of this regulation. [~~during the first full calendar year subsequent to the date on which the certified person received his certification and during every calendar year thereafter.~~]

(3) The annual retraining program shall include but not be limited to the following courses of instruction:

(a) Transportation controls and communications systems. The course shall include instruction in procedures for riding on and in mine conveyances, the controls in effect for the transportation of miners and material, [~~and~~] the use of the mine communication system, warning signals and directional signs.

(b) Barricading. The course shall include instruction and review of the methods of barricading and locations of barricading materials.

(c) Roof control and ventilation plans. The course shall include instruction in and review of the roof control and ventilation plans [~~plan~~] in effect at the mine, [~~and~~] the procedures for roof and rib control, [~~and instruction and review of the ventilation plan in effect at the mine~~] and the procedures for maintaining ventilation and control of ventilation.

(d) First aid. The course shall include instruction and review of first aid methods.

(e) Electrical hazards, moving equipment. The course shall include instruction on the recognition and avoidance of electrical hazards and procedures for working on and near moving equipment throughout the mine.

(f) Accident prevention. The course shall include instruction in and review of the prevention of accidents, both electrical and mechanical.

(g) Self-rescue devices. The course shall include instruction in the use, care and maintenance of self-rescue devices.

(h) Explosives. The course shall include instruction in and review of [~~and instruction on~~] the hazards related to explosives and [~~instruction in~~] procedures for the safe handling and use of explosives.

(i) Health and safety standards. Instruction shall be given on the health and safety standards set out [~~standard requirements contained~~] in KRS Chapters 351 and 352 and in the Federal Mine Safety and Health Act of 1977 (PL 95-165) as such requirements are related to the tasks and work assignments of each miner.

Section 2. All persons required to receive annual retraining shall complete that retraining within not more than twelve (12) months from the end of the month in which their most recent annual retraining was completed. Each instructor administering annual retraining shall, within ten (10) days of administering it, certify to the department, on forms prepared by it, the nature of the retraining administered by him and the names of the persons receiving it. All persons required to receive annual retraining may receive it within less than twelve (12) months from the month of completion certified by an instructor and recorded as such by the department, whereupon those persons shall be required to satisfy their annual retraining requirement within not more than twelve (12) months from the month of completion of all successive annual retraining received by them. [~~Annual retraining programs for certified persons may be conducted at various times throughout the calendar year, but no session shall be less than thirty (30) minutes of actual instruction time and the persons to be instructed shall be notified that the session is part of the annual retraining.~~]

Section 3. The operator shall annually verify in the form of an affidavit to the department that each certified person in his employ has received the minimum sixteen (16) hours of annual retraining as required by this regulation. Such affidavit shall state the dates on which the annual training sessions were conducted and the names and corresponding Social Security numbers of those persons, including persons no longer in the employ of the operator, receiving the annual retraining; provided, however, that no person shall be required to disclose his Social Security number for purposes of this affidavit. In the event that a person who has received the annual retraining refuses to disclose his Social Security number, the operator shall make a notation to that effect in the affidavit in lieu of stating that person's Social Security number.

Section 4. Willful failure of a certified person to attend a minimum of sixteen (16) hours of annual retraining shall constitute grounds for revocation, suspension, or probation of the certificate, in accordance with KRS 352.390 [~~352.370~~].

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Monday, November 30, 1992 at 10 a.m., prevailing local time, in the Conference Room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this

hearing shall notify this agency in writing by November 25, 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 wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person: Eugene D. Attkisson, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, (606) 254-0367.

REGULATORY IMPACT ANALYSIS

Agency Contact: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed amendment will apply to the annual retraining received by all of Kentucky's certified underground miners, whose number has annually averaged approximately 20,600 since 1988.

(a) Direct and indirect costs or savings to those affected: Since this proposed amendment only addresses the manner in which annual retraining is received and does not create any new requirements as to the nature of the retraining itself, no costs or savings to affected persons are anticipated.

1. First year: No direct or indirect costs or savings are anticipated, since annual retraining of all certified underground miners is currently required; only the scheduling of such annual retraining is affected by this proposed amendment.

2. Continuing costs or savings: There are no continuing costs or savings associated with this proposed amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This proposed amendment is anticipated to have no effect upon the annual retraining costs of either employers or employees; there are, therefore, no additional factors which bear upon such costs, which are expected to remain consistent. Neither does this proposed amendment affect competition, since it will be uniformly applied to all certified underground miners, without regard to the specialty in which they are certified or to the financial resources of their employer.

(b) Reporting and paperwork requirements: This proposed amendment requires each instructor administering annual retraining to certify to this agency, within ten (10) days of that annual retraining, the nature of the retraining administered by him and the names of the persons receiving it.

(2) Effects on the promulgating administrative body: This proposed amendment is anticipated to create a "spreading out" of the period within which annual retraining is administered and thereafter reported to this agency. Since most annual retraining is currently reported toward the end of the calendar year, this amendment is expected to produce retraining and its reporting which are more evenly distributed throughout the year.

(a) Direct or indirect costs or savings: This agency is presently recording the retraining information supplied to it by instructors and is maintaining current information regarding the certification status of underground miners. There will accordingly be no additional administrative costs relating to the recording of retraining information and updating of certificates following this agency's receipt of that information.

1. First year: No direct or indirect costs or savings are anticipated, since this agency is currently compiling and maintaining information as to the annual retraining of all certified underground miners.

2. Continuing costs or savings: There are no continuing costs or savings associated with this proposed amendment.

3. Additional factors increasing or decreasing costs: This proposed amendment is anticipated to have no effect upon the annual retraining costs of either employers, employees, or this agency; there are, therefore, no additional factors which bear upon such costs, which are expected to remain consistent.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements associated with this proposed amendment, since annual retraining, its reporting and recording, are currently required.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues as a result of this proposed amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the enactment of this proposed amendment would be to leave unchanged the current standards for the annual retraining of underground miners, which standards require retraining in successive calendar years, but do not specify the maximum permissible interim between such annual retraining. It is therefore possible to satisfy the existing annual retraining requirement by receiving retraining in January of 1992, and December of 1993, for example, whereby twenty-three (23) months elapse between retraining, notwithstanding that it is received in successive calendar years. A 23-month gap between retraining is arguably not "annual retraining."

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed amendment neither conflicts with, overlaps, nor duplicates any statute, administrative regulation or government policy.

(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:

(6) Any additional information or comments: The enactment of this proposed amendment will not only narrow the potential gap in the scheduling of annual retraining described in (4), above, but will also encourage greater flexibility among mine operators in their scheduling of it. That greater flexibility will in turn result in a more evenly distributed responsibility in this agency to update and maintain current certification information regarding Kentucky's 20,000+ certified underground miners.

TIERING: Was tiering applied? Yes. Tiering was applied in the promulgation of this proposed amendment because the program of annual retraining of underground miners is comprised of topics and techniques which are significantly different from those associated with the retraining of surface miners. This proposed amendment would apply only to those underground miners receiving retraining in the courses of instruction described in the administrative regulation's existing Section 1(3).

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter.

Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.

(2) Procedure for determining confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.

(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880

(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.

(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:

(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

(b) A fully forecasted test period and shall include:

1. A statement of the reason the adjustment is required;

2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);

3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership

agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;

7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

(2) Notice of intent. Utilities with gross annual revenues greater than $1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.

(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;

(c) Electric, gas, water and sewer utilities shall include the affect upon the average bill for each customer class to which the proposed rate change will apply;

(d) Local exchange companies shall include the affect upon the average bill for each customer class for the proposed rate change in basic local service;

(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;

(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;

(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and

(i) The commission may grant a utility with annual gross revenues greater than $1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.

(4) Manner of notification.

(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.

(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.

(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:

1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;

2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or

3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.

(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.

(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.

(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.

(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.

(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and explanation for all proposed adjustments;

(b) If the utility has gross annual revenues greater than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the affect that the new rate(s) will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water or sewer service the affect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is a local exchange company the affect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) The most recently filed federal and state income tax returns;

(k) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(l) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(m) A quantified explanation with proper support for all proposed price changes, escalation factors, and changes in activity levels;

(n) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(o) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(p) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(q) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(r) Prospectuses of the most recent stock or bond offerings;

(s) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(t) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(u) If the utility is a wholly-owned subsidiary, the most recent consolidated federal income tax return of the utility's parent, consolidated financial statements of the utility's parent and any supporting schedules of the jurisdictional utility;

(v) Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;

(w) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon to demonstrate that each amount charged, allocated or paid during the test period was reasonable;

(x) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(y) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments;

(e) The number of customers to be added to the test period - end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast except for the correction of mathematical errors.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist

and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or cnterest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement;

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) The most recently filed federal and state income tax returns;

(q) The most recently filed consolidated federal income tax return of the utility's parent;

(r) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;

(s) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(t) The quarterly reports to the stockholders for the most recent five (5) quarters;

(u) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(v) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(w) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

(x) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(y) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with

more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

(i) Based on current and reliable data from a single time period; and

(ii) Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time:

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements, revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request. [~~Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 8 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:~~

~~(a) Financial exhibit (see Section 6 of this regulation).~~

~~(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.~~

~~(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.~~

~~(d) A statement in full of the reason why the adjustment is required.~~

~~(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.~~

~~(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).~~

~~(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) of this section, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:~~

~~(a) Total amount of interest charged to construction.~~

~~(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.~~

~~(c) Details of any apportionment used.~~

~~(d) Monthly revenues and operating expenses.~~]

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the

contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.

(b) Answer.

(c) Application.

(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant) Complainant	)	
	)	No. _____
vs.	)	(To be inserted by the secretary)
(Insert name of each defendant) Defendant	)	

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____, 19___ .

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant) COMPLAINANT	)	
	)	No._____
vs.	)	(To be inserted by the
	)	secretary)
	)	
(Insert name of each defendant) DEFENDANT	)	

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of (here insert name of each applicant) for (here insert desired order, authorization, permission or certificate, thus: "Order authorizing issue of stocks and bonds")	)	
	)	No._____
	)	(To be inserted by the
	)	secretary)
	)	

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____,19___.

_____
(Name of applicant)

_____
(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment of rates of the (state name of corporation).	)	No._____
	)	(To be inserted by the
	)	the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19___, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

_____
(Name and address of company)

_____
(Name and address of attorney)

GEORGE EDWARD OVERBEY, JR., Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 8, 1992
FILED WITH LRC: October 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1992, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 25, 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 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 Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-2473.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Mills

(1) Type and number of entities affected: The amendments to the regulation relate to minimum filing requirements for applications for general rate adjustments and affect all utilities under Public Service Commission rate jurisdiction. There are currently 507 jurisdictional

utilities.

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

1. First year: The procedure established in the amendment has no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: The procedure established in the amendment has no direct or indirect continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendment has no additional factors increasing or decreasing costs to those affected.

(b) Reporting and paperwork requirements: The amendment changes the current filing requirements for utilities filing rate applications based on a historical test year and establishes the new filing requirements for rate applications based on the new statutorily allowed future test year. The filing requirements for historical test year applications are substantially the same as currently required by the commission in standard data request. The filing requirements for future test year applications are new because it was recently mandated by statute, therefore there is no increase or decrease for comparative purposes.

(2) Effects on the promulgating administrative body: Minimum filing requirements applicable to utilities when applying for a general adjustment in their rates.

(a) Direct and indirect costs or savings:

1. First year: The amendment will have no direct or indirect costs or savings to the agency.

2. Continuing costs or savings: The amendment will not have any direct or indirect continuing costs or savings to the agency.

3. Additional factors increasing or decreasing costs: The amendment does not have any additional factors increasing or decreasing costs to the agency.

(b) Reporting and paperwork requirements: There will be no increase or decrease in the current paperwork or reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment merely codifies the existing commission filing requirements for historical test year rate applications. The forecast test year filing requirements are new. Commission staff has met informally with interested utilities and intervening parties and this amendment incorporates minimum filing requirements. No completely different alternative method has been proposed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict has been identified.

(a) Necessity of proposed regulation if in conflict: No conflict has been identified.

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

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? Yes. Tiering was applied for all filing requirements when it was possible and reasonable. A majority of the filing requirements could not be tiered because the information is essential to determining fair, just, and reasonable rates regardless of utility's size.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities
(Proposed Amendment)

808 KAR 10:270. Registration exemption for securities listed on the Chicago Board Options Exchange.

RELATES TO: KRS Chapter 292, 292.340 to 292.390, 292.400

STATUTORY AUTHORITY: KRS 292.400(8), 292.500

NECESSITY AND FUNCTION: The requirements for listing with the Chicago Board Options Exchange, Incorporated will sufficiently protect the investing public and are substantially equal to those for listing with the exchanges exempted by KRS 292.400(8).

Section 1. KRS 292.340 to 292.390 shall not apply to any of the following securities:

(1) Any security listed or approved for listing on the Chicago Board Options Exchange, Incorporated (CBOE) provided that [~~the security is not offered or sold pursuant to an issuer's initial public offering and~~] provided that there has been no waiver of the requirements set forth in the Memorandum of Understanding between the North American Securities Administrators Association, Inc. and the CBOE adopted May 1991; or

(2) Any other security of an issuer which has a security listed on the CBOE provided that the other security is of senior or substantially equal rank to the listed security; or

(3) Any security called for by subscription rights or warrants if the security, subscriptions rights or warrants are listed or approved for listing on the CBOE; or

(4) Any warrant or right to purchase or subscribe to any of the foregoing.

Section 2. The Memorandum of Understanding, dated May 1991, between the North American Securities Administrators Association, Inc. and the CBOE referred to in Section 1 of this regulation is hereby incorporated by reference. A copy of the memorandum may be obtained by writing or calling the Kentucky Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. The memorandum may be inspected and copied at the Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except for state holidays.

EDWARD B. HATCHETT, JR., Commissioner

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on November 23, 1992 at 10 a.m. (ET) at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: David H. Ashley, General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lewis Kelly

(1) Type and number of entities affected: The proposed amendment would apply to all initial offerings which have been listed or have been approved for listing on the Chicago Board Options Exchange. The total number is unknown at this time. The purpose of this amendment is to grant equal status to an issuer's initial public offering listed on the Chicago Board Options Exchange to that of initial public offerings exempted by virtue of being listed or approved for listing on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, and those

designated or approved for designation on the National Association of Securities Dealer's Automated Quotation-National Market System.

(a) Direct and indirect costs or savings to those affected: There are currently no entities or registrations affected by the amendment; therefore there are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There would be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Initial public offerings made by companies which are registered or designated for registration with the Chicago Board Options Exchange would be exempt from registration fees in registering their securities for sale within this state. An exact dollar amount per registration cannot be determined at this time.

(2) Effects on the promulgating administrative body: The affect on the promulgating administrative body would be minimal.

(a) Direct and indirect costs or savings: There are no direct or 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: There may be minimal additional registrations with the Division of Securities.

(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: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or in duplication.

(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:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The adoption of this amendment would apply to all initial public offerings to securities list or approved for listing on the Chicago Board Options Exchange.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, drug, substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Any drugs which may mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(3) Proof of detection by the commission chemist of a medication, drug, substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, blood, or other specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that the horse was administered and carried prohibited medications, drugs, or substances, in its body while running in the race in violation of this administrative regulation.

~~[(4) Medications, drugs, or substances shall be used consistently on horses. Permission to change the use of any nonsteroidal anti-inflammatory drug or bleeder medication shall be obtained from the commission veterinarian.]~~

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which the horse is entered and prior to the race. No medication, drug, or substance shall be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian.

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this regulation, or caused, or participated, or attempted to participate in any way in the administration, of such, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering. Failure to prove freedom from negligence or reliance on the professional ability of a licensed veterinarian shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation, if found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing the treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action:

(1) Daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily reports shall be in complete accord; any deviation shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. This list when published shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing. The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, saliva or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist. The costs of testing shall be borne by the owner or trainer requesting the test. In the absence of any order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse shall be prohibited in the detention area; buckets and water shall be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner; responsible trainer who, in the case of a claimed horse shall be the person in whose name the horse raced; or a stable representative designated by such owner or trainer, shall be present and witness the taking of the specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which the specimen was taken, as well as the race and day, verified by the witness, and the detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and, as near as possible, shall be preserved in the same condition and temperature. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances,

and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: September 29, 1992

FILED WITH LRC: October 14, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing will be held on November 24, 1992 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B., Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack H. Smith, III

(1) Type and number of entities affected: All horses entering with nonsterodial anti-inflammatory drugs.

(a) Direct and indirect costs or savings to those affected: There is no cost component with this rule change.

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: Eliminates substantial paperwork for commission.

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings: Will save 1/2 hour per day (or about $5 per day).

1. First year: Save $1,450.

2. Continuing costs or savings: Save $1,450.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Already addressed.

(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: See below.

TIERING: Was tiering applied? No. There is nothing to tier. Currently, programs reflect "B" for use of bute. Approximately 96% of entries use bute so notice seems inappropriate. Also, notice of "first time on bute" is misleading since its only the first time "in Kentucky".

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:025. Licensing thoroughbred racing.

RELATES TO: KRS 230.280, 230.290, 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. (1) Representations made on or with license application shall be complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal. All rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during the race. All such excepted rulings and decisions by the stewards shall be final with no right of review by the commission.

(3) Licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including, without limiting, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering.

Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any statute or administrative regulation dealing with a controlled substance;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(4) Making false or misleading statements to the commission or the stewards in the course of an investigation;

(5) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(7) Person less than sixteen (16) years of age;

(8) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;

(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;

(11) Discontinuance of or ineligibility for activity for which license was issued;

(12) Possession on association grounds, without written permission from the commission or stewards, of:

(a) Firearms;

(b) Battery, buzzer, or electrical device; or

(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

(13) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or

(b) Narcotics, medication, or drugs, or substance which could be used to alter the speed of a horse in a race.

(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;

(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(20) Violation of any administrative regulation of the commission, or aiding or abetting any person in violation of any such administrative regulation.

Section 4. License Applications for Associations. Any person or legal entity desiring to conduct thoroughbred racing in the Commonwealth may apply to the commission for association license. The application shall be made in writing on application forms prescribed by the commission. Applications shall be filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. The application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by other physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted; and number of races to be run on each day.

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct racing.

Section 5. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification shall be required of all licensed owners, trainers, and jockeys. All owners, trainers, and jockeys shall reimburse the commission for the full cost of fingerprinting and related investigative procedures. [~~license unless waived by the commission. Fingerprint identification shall not be required of absentee owners and casual delivery personnel who do not enter the stable area.~~]

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to

designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) Thirty-five (35) dollars - owner license, trainer, assistant trainer, veterinarian, dental technician, blacksmith, farrier, or apprentice farrier license; jockey, farm manager/agent, racing official, steward, [~~commission veterinarian, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, commission horse identifier; commission chemist,~~] testing laboratory employee; racing department employee license, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer;

(b) Twenty-five (25) dollars - veterinarian assistant, stable-area supplier license (suppliers of horse feed, tack, medication, or food vendors); person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, jockey apprentice;

(c) Forty-five (45) dollars - jockey agent;

(d) Ten (10) dollars - association employee and occupational license, [~~valet, jockey room custodian, clerk of scales, entry clerk,~~] photo finish operator, film patrol or video tape operator and projectionist, [~~flagman, or outrider,~~] association security department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees, admission department manager and employees; concessions manager and employees, parking manager and employees; all other persons employed by the association; vendor employees;

(e) Five (5) dollars - stable employee license (foreman, exercise boy, groom, hotwalker, watchman, or pony boy);

(f) Twenty (20) dollars - mutuel department employee license[~~, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee~~];

(g) Thirty (30) dollars - life colors.

Section 6. Licensing Committee. The commission may appoint a licensing committee including the executive director and commission steward or their designated representative. The licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which license application was made pending administrative processing and final action on such license application by the commission.

Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 8. Possession of License Required. No person required to be licensed by these administrative regulations may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. All licenses specified under Section 7(9)(b) to (f) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 9. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by the affected person shall in no way circumvent the intent of the administrative regulation, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 10. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of his intention at least fifteen (15) days before termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: September 29, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on November 24, 1992 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B., Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack H. Smith, III

(1) Type and number of entities affected: Standardizes license fees for all breeds. Affects approximately 12,000 owners, trainers, jockeys and drivers.

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

1. First year: Fingerprinting costs $40 but will only be done every five years.

2. Continuing costs or savings: Annual licenses result in savings for some individuals and additional costs for others. Most changes do not exceed $15 either way.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no competition. This will bring Kentucky closer to national procedures toward reciprocity.

(b) Reporting and paperwork requirements: No effects to licensees.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs of fingerprinting offset by reimbursement. State Police to do the work.

1. First year: Since fingerprinting is done every five years, the first year will be the busiest.

2. Continuing costs or savings: All costs are offset by the $40 fee.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Only minimal additional paperwork.

(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: Kentucky is one of few states that do not currently fingerprint.

TIERING: Was tiering applied? Yes. Different fees apply for different qualifications.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:027. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.260
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person authorized by either.

(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person authorized by either.

Section 2. Entering Required. No horse shall be qualified to start in any race unless it has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.

(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.

(3) An entry shall be in writing or by telephone to the racing secretary. Telephone entries shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.

(a) No horse shall race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. All such persons shall be subject to appropriate disciplinary action for incorrect identification.

(c) Horses requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding, must be registered as such with the commission veterinarian. Horses so categorized shall remain, and removal requires commission veterinarian approval. After inclusion, no additional notification shall be required. Horses not properly registered will not be permitted to race with antibleeder medications, drugs, or substances. Registration must be made prior to entry. The racing program will indicate usage. [~~An entry shall clearly state all medications, drugs, or substances which the horse shall receive as prerace treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: nonsteroidal anti-inflammatory drugs shall be designated by (B); and all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).~~]

(5) No alteration, except an error corrected with the permission of the stewards, shall be made in an entry after the closing of entries.

(6) No horse shall be entered in two (2) races to be run on the same day.

(7) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting. A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry. [~~A horse which has not started in the past ninety (90) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.~~] If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing. The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race. A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. No entry in a race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsection (5) of this section.

(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse thereof, a preference for one (1) of the horses shall be made.

(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.

(5) In thoroughbred stakes races with added money of $100,000 or more, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races. If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time. If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before such races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by such conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided for in an administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence draw, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list not

wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) No preference shall be given a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, no horse shall be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. No declaration fee shall be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If:

(a) Horses representing more than ten (10) betting interests in either of the two (2) daily double races; or

(b) Horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: September 29, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on November 24, 1992 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack H. Smith, III

(1) Type and number of entities affected: All horses entering with nonsterodial anti-inflammatory drugs.

(a) Direct and indirect costs or savings to those affected: There is no cost component with this rule change.

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: Eliminates substantial paperwork for commission.

(2) Effects on the promulgating administrative body: Same as above.

(a) Direct and indirect costs or savings: Will save 1/2 hour per day (or about $5 per day).

1. First year: Save $1,450.

2. Continuing costs or savings: Save $1,450.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Already addressed.

(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: See below.

TIERING: Was tiering applied? No. There is nothing to tier. Currently, programs reflect "B" for use of bute. Approximately 96% of entries use bute so notice seems inappropriate. Also, notice of "first time on bute" is misleading since its only the first time "in Kentucky".

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

811 KAR 1:180. Personnel to be licensed; fees.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700, 230.710

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the licensing of personnel and the fees to be charged for licensing.

Section 1. Every person holding a permit to conduct pari-mutuel wagering in this state and every person who is a member of an association holding such a permit and every person who is an officer of a corporation which holds such a permit, and every employee of the holder of such permit in any capacity connected to any extent with the pari-mutuel wagering business in this state, and all owners, trainers, drivers, grooms, managers, agents, blacksmiths, veterinarians, and like persons who actively participate in the racing activities of any such permit holders, shall furnish the commission, on demand, for its files, his fingerprints and photograph. [~~, which~~] Fingerprints [~~and photograph~~] shall be furnished by owners, trainers, and drivers at the time application is made for license from this commission. All owners, trainers, and drivers shall reimburse the commission for the full cost of fingerprinting and related investigative procedures.

Section 2. No one shall be permitted to enter in or about the grounds, stables or stable enclosures who does not have in his possession a license issued by the commission as owner, trainer, driver, apprentice, agent, stable foreman, groom, veterinarian, or proper credentials issued by the association, and a full record of these credentials shall be compiled and open to inspection at all times.

Section 3. At all pari-mutuel racing meetings all persons in the appended list shall procure a license from the commission. The annual fee for such licenses shall be paid at the time of the filing of the application and shall be as follows:

[~~(1) Ownership fees:~~

~~Corporation or Limited Partnership with 1,001 or more shareholders or limited partners . . . . . $500~~

~~Corporation or Limited Partnership with 201-1000 shareholders or limited partners . . . . . 200~~

~~Corporation or Limited Partnership with 21-200 shareholders or limited partners . . . . . 100~~

~~Corporation or Limited Partnership with 1-20 shareholders or limited partners . . . . . 25~~

~~Each officer, director, and shareholder or limited partner owning five (5) percent or more interest in the corporation . . . . 10~~

~~Individual Owner . . . . . 10~~

~~(2) Participant fees:~~]

Owner	$35	Occupationals	$10
[~~Stable License . . . . .~~	~~$50~~]	Announcer	10 [~~25~~]
[~~Owner-driver	~~25~~]	Assistant race	
[~~Owner-driver-trainer . .~~	~~25~~]	secretary	35 [~~12~~]
Driver	35 [~~25~~]	Assistant starting	
Driver-trainer	35 [~~25~~]	judge/gate driver . .	35 [~~12~~]
[~~Owner-trainer	~~25~~]	Charter	10 [~~25~~]
Trainer	35 [~~25~~]	Clerk of course	10 [~~25~~]
Judges-associate .	35 [~~25~~]	Farrier	35 [~~25~~]
Judges-paddock . .	35 [~~25~~]	Mutuel employees .	20 [~~12~~]
Judges-patrol	35 [~~18~~]	[~~Program director . . . . .~~	~~25~~]
Judges-presiding .	35 [~~25~~]	Timer	35 [~~12~~]
Judges-starting . . .	35 [~~25~~]	Veterinarian	35 [~~25~~]
Race secretary . . .	35 [~~25~~]	[~~Miscellaneous . . . . .~~	~~12~~]
Security guard . . .	10 [~~12~~]	Groom	5
Director of Security	10 [~~25~~]	Vendor/Vendor Employee	25
Mutuel Manager . .	20 [~~25~~]		

Section 4. Should a licensee lose a permit or should a permit in some manner be destroyed, such licensee may apply for a duplicate permit for a fee of five (5) dollars[~~, except a grooms license shall be duplicated for one (1) dollar~~].

Section 5. If the commission, in its discretion, shall find that the experience, character and general fitness of the applicant are such that the participation of such person in harness horse race meets will not be consistent with the public interest, convenience and necessity and with the best interests of racing generally in conformity with the purposes of the harness racing act, it may there upon deny a license.

[~~Section 6. If a license has previously been issued by the United States Trotting Association then upon payment of the license fee set out in Section 3 of this regulation, said license may be approved by an official stamp of the commission without the requirement on the part of said applicant to submit data required by Section 1 of this regulation.~~]

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: September 29, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on November 24, 1992 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B., Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack H. Smith, III

(1) Type and number of entities affected: Standardizes license fees for all breeds. Affects approximately 12,000 owners, trainers, jockeys and drivers.

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

1. First year: Fingerprinting costs $40 but will only be done every five years.

2. Continuing costs or savings: Annual licenses result in savings for some individuals and additional costs for others. Most changes do not exceed $15 either way.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no competition. This will bring Kentucky closer to national procedures toward reciprocity.

(b) Reporting and paperwork requirements: No effects to licensees.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs of fingerprinting offset by reimbursement. State Police to do the work.

1. First year: Since fingerprinting is done every five years, the first year will be the busiest.

2. Continuing costs or savings: All costs are offset by the $40 fee.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Only minimal additional paperwork.

(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: Kentucky is one of few states that do not currently fingerprint.

TIERING: Was tiering applied? Yes. Different fees apply for different qualifications.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

811 KAR 2:020. Licensing procedures.

RELATES TO: KRS 230.610 to 230.770
STATUTORY AUTHORITY: KRS 13A.010 et seq.
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline the licensing procedures and requirements.

Section 1. License Required. No person, legal entity, or association shall conduct any Arabian, quarter horse or appaloosa race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in Arabian, quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Arabian, quarter horse and appaloosa racing and participation therein in the Commonwealth are privileges, not rights, granted only by the commission by license subject to the hereinafter set out conditions precedent. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply therewith shall be grounds for immediate voidance or revocation of such license:

(1) Representations made or with license application are complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal thereto. All rulings and decisions of the stewards may be appealed to the commission except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during such race, and all such excepted rulings and decisions by the stewards shall be final with no right of review thereof by the commission or courts.

(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard such horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of such horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for same to conduct an Arabian, quarter horse or appaloosa race meeting on such days as the commission may deem appropriate, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, or improve the Arabian, quarter horse and appaloosa industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in Arabian, quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any narcotic regulation;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Arabians, quarter horses or appaloosas.

(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(5) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(6) Person less than sixteen (16) years of age;

(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(8) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(9) Employment or harboring of unlicensed persons required by

these rules to be licensed;

(10) Discontinuance of or ineligibility for activity for which license was issued;

(11) Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device, or other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(12) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

(13) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;

(14) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(15) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(16) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(17) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(18) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing; or association with persons so characterized;

(19) Violation of any rule of the commission, or aiding or abetting any person in the violation of any such rule.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct Arabian, quarter horse or appaloosa racing in the Commonwealth may apply to the commission for association license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Such application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted.

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct Arabian, quarter horse and appaloosa racing.

(8) Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

From	But Less Than	Daily Licensing Fee
$ 0	$ 75,000	$100
75,000	150,000	150
150,000	200,000	200
over 200,000		300

In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid. As used in this section the term "daily mutuel" is understood to be the total gross amount of money bet or wagered by the track's patrons.

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 and desiring to participate in Arabian, quarter horse and appaloosa racing in the Commonwealth may apply to the commission for a license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification will be required of all licensed owners, trainers, and jockeys. All owners, trainers, and jockeys shall reimburse the commission for the full cost of fingerprinting and related investigative procedures. [~~licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).~~]

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until such applicant has been administered a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of such applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) $35 [~~25~~] - Owner license [~~and annual color registration~~];

(b) $35 [~~25~~] - Trainer, jockey, or $45 - jockey's agent license;

(c) $35 [~~25~~] - Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) $5 - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) $25 - Stable area supplier license (suppliers of horse feed, tack, medication, or food vendors);

(f) $35 [~~10~~] - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, [~~commission veterinarian, commission chemist, commission supervisor of pari mutuel betting, commission director of security, commission license administrator, commission inspector,~~] association veterinarian, testing laboratory employee, horse identifier[~~, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider~~];

(g) $20 [~~10~~] - Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(h) $10 - Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; valet, jockey room custodian, clerk of the scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting;

[~~(i) $5 - Temporary occupational license for persons to be employed in occupations listed in paragraph (h) of this subsection for ten (10) days or less during a calendar year.~~]

Section 8. Licensing Committee. The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative. Such licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. Such licensing committee may issue to a license applicant a temporary permit to participate in the activity for which such license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in Arabian, quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during such calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license and any such renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.

Section 10. Possession of License Required. No person required to be licensed by these rules may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this regulation shall include a color photograph of the licensee.

Section 11. Applicability of Rules and Rulings to Household. Rules pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 12. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of such intention at least fifteen (15) days before such termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these rules, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: September 29, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing will be held on November 24, 1992 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B., Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack H. Smith, III

(1) Type and number of entities affected: Standardizes license fees for all breeds. Affects approximately 12,000 owners, trainers, jockeys and drivers.

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

1. First year: Fingerprinting costs $40 but will only be done every five years.

2. Continuing costs or savings: Annual licenses result in savings for some individuals and additional costs for others. Most changes do not exceed $15 either way.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no competition. This will bring Kentucky closer to national procedures toward reciprocity.

(b) Reporting and paperwork requirements: No effects to licensees.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs of fingerprinting offset by reimbursement. State Police to do the work.

1. First year: Since fingerprinting is done every five years, the first year will be the busiest.

2. Continuing costs or savings: All costs are offset by the $40 fee.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Only minimal additional paperwork.

(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: Kentucky is one of few states that do not currently fingerprint.

TIERING: Was tiering applied? Yes. Different fees apply for different qualifications.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This administrative regulation includes the substance of 815 KAR 7:020, which is being repealed. This amendment is necessary to clarify the code requirements of horizontal sliding doors in Section 8; amend seismic requirements in Sections 11 and 13, and amend Appendix A relating to the Safety Code for Elevators and Escalators. ~~[This amendment is necessary to update the reference to NFPA Pamphlets dealing with sprinkler systems to the latest edition. This change was approved by the Board of Housing on January 23, 1992.]~~

Section 1. Article 2, Definitions. Amend Article 2 by adding the following definitions:

(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.

(2) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(3) "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.

(4) "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.

(5) "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.

(6) "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.

(7) "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.

(8) "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.

(9) "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.

(10) "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).

(11) "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$SC = \frac{\text{Solar Heat Gain of Fenestration}}{\text{Solar Heat Gain of 1/8-inch Clear Glass}}$$

(12) "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.

(13) "Smoke detector, single station" means an assembly incorporating the detector, control equipment and the alarm- sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.

(14) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)

(15) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals pertaining to a fire emergency.

(16) "Wireless initiating device" means an initiating device which communicates with associated control or receiving equipment by means of wireless transmission medium.

Section 2. Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as if set forth at length herein, except as amended in Section 2 through 34 of this administrative regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety. All requirements for the administration and enforcement

of this administrative regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught. 304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E."

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if all of the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fire-resistance Ratings of Structure Elements (In Hours), by creating a footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and l)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

(2) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(3) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(4) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing for accessible buildings and facilities."

(5) Delete subsection 513.1, Approval, in its entirety.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

(2) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system shall be permitted."

(3) Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 126.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and

to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of stories above grade	Maximum occupants, travel distances[d] or dwelling units per floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating Without sprinkler system	Required Fire-resistance Rating With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a],[f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend Section 813.4, Door hardware, by creating an additional exception to read as follows: "6. Horizontal sliding doors complying with subsection 813.4.3."

(9) [~~(8)~~] Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(10) Amend subsection 813.4.3 by adding the following language to the end of the existing subsection: "Horizontal sliding doors complying with this section shall be permitted. A sign shall be placed on the egress side of the door in a conspicuous location which reads, "In case of emergency, push to open." The sign shall be in letters not less than two (2) inches high and mounted approximately sixty (60) inches above the finished floor."

(11) [~~(9)~~] Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(12) [~~(10)~~] Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases.

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.
2. Buildings of Use Group I-3.
3. Floors that exceed five (5) stories or sixty-five (65) feet in

height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of

exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend subsection 1113.1 to read as follows: "1113.1 General: Every building and structure, and portion thereof, shall be designed and constructed to resist the earthquake effects determined in accordance with this section. Seismic zones shall be determined by location in Figure 1113.1; except that the risk zone assigned to each listed county on Page 283 shall supersede any general area requirements as shown on the face of the map. Where wind load requirements of Section 1112.0 would produce higher stresses, these stresses shall be used in lieu of the stresses resulting from earthquake forces."

(4) Amend subsection 1113.1 by creating an additional exception to read as follows: "4. Alternate method: Any building or structure designed and constructed in conformity with all seismic related provisions located between pages 249 and 353 of the 1992 Accumulative Supplement of the BOCA National Building Code together with the special inspection requirements of Section 1308.1 shall be exempt from the requirements of this section."

(5) [~~(3)~~] Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1			
Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley
Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2		Earthquake Risk Zone #3	
Bell	Hopkins	Ballard	Hickman
Caldwell	Letcher	Carlisle	Livingston
Calloway	Lyon	Fulton	Marshall
Crittenden	Trigg	Graves	McCracken
Harlan	Union		
Henderson	Webster		

(6) [~~(4)~~] Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Amend subsection 1308.1 to read as follows: "1308.1 General: The owner shall provide special inspections where application is made for construction under the alternative method of seismic design allowed by subsection 1113.1(4). The special inspections required by subsections 1308.1 through 1308.8 shall apply to seismic related construction only and this section shall not be mandatory for any other permit or construction. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exceptions:

1. Special inspections are not required for work of a minor nature or when warranted by conditions approved by the building official.

2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by KRS Chapters 322 and 323.

3. Special inspections are not required for buildings of Use Group R-3." [~~Delete subsections 1308.1 through 1308.8 in their entirety.~~]

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsec-

tion to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a

travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990 with the exception of rule 102.2(c)(4)".

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80,

#82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1991 Edition."

(7) Amend Appendix A by changing the Edition date to "1991" for National Fire Protection Association (NFiPA) Pamphlets #13 and #13R.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: Contractors, architects, engineers, design professionals, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year: See above.

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied in the sense that building code construction requirements are more stringent for buildings in Zone 3 than in Zone 2 based on nationally recognized potential for seismic hazards from earthquakes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 10:040. Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227

STATUTORY AUTHORITY: KRS 227.300

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable administrative regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. This administrative regulation [~~These regulations~~] shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety and [~~. They~~] shall be used, where applicable, as a supplement to the Kentucky Building Code. This administrative regulation is necessary to establish minimum fire safety standards especially for buildings not constructed in accordance with applicable building codes in existence at time of construction. These standards are enforceable, as provided in this administrative regulation, by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320. This administrative regulation includes the substance of 815 KAR 10:020, which is being repealed. This amendment is necessary to create new definitions, comply with certain KRS Chapter 13A requirements and to clarify and update the fire safety standards in several categories (e.g., laboratories, testing

of alarm and sprinkler systems, recordkeeping of fire drills in schools, flammable finishes, specifying precise NFiPA editions). In addition, specific language for flammable liquid plant operations and LP gas installations have been added. [~~This amendment is necessary because of conflicts in Articles 16 and 28 with existing regulations for oil and gas wells in the Department for Mines and Minerals.~~]

Section 1. Definitions. Definitions in this section shall apply to this administrative regulation and shall be incorporated into Article 2, Section 201 of the Kentucky Standards of Safety.

(1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for another code requirement because the substitute meets the intent of the code.

(2) "Code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this code and the codes and standards adopted herein. (See "Fire code official")

(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.

(4) "Common path of travel" means that portion of exit access that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.

(5) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature of rate-of-temperature rise.

(6) [~~(5)~~] "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of fire or explosion or other impending disaster that may be a threat to life or property.

(7) [~~(6)~~] "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(8) "Fire alarm box, manual" means a manually operated alarm-initiating device that, when operated, closes or opens one (1) or more sets of contacts.

(9) [~~(7)~~] "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(10) [~~(8)~~] "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this administrative regulation and the codes and standards adopted herein. (See "Code official")

(11) [~~(9)~~] "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(12) "Fire detector, automatic" means an alarm-initiating device that automatically detects heat, smoke or other products of combustion.

(13) [~~(10)~~] "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wildland).

(14) [~~(11)~~] "Fire prevention code" means the BOCA National Fire Prevention Code, 1990 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction and otherwise known as the Kentucky Standards of Safety.

(15) "Fire protection" means the provision of construction safeguards and exit facilities and the installation of fire alarm, fire-detecting and fire-extinguishing service equipment to reduce the fire risk and conflagration hazard.

(16) "Fire protective signaling system, central station" means a central office, connected to remote alarm and supervisory signaling devices, where personnel shall be in attendance at all times to monitor the system activity and investigate signals. The central-station personnel shall take immediate and appropriate action upon receipt of an alarm signal.

(17) "Fire protective signaling system, local" means a local system that sounds an alarm at the protected premises as the result of the manual operation of a fire alarm box or the operation of fire protection equipment or systems such as water flowing in a sprinkler system, the discharge of CO^2 or Halon, or the detection of smoke or heat.

(18) "Fire protective signaling system, proprietary" means an installation of protective signaling systems that shall serve contiguous and noncontiguous properties under one (1) ownership from a central supervising station located at the protected property, where trained, competent personnel shall be in constant attendance.

(19) "Fire protective signaling system, remote station" means an installation using supervised circuits to transmit alarm, supervisory and trouble signals from one (1) or more protected premises to a remote location at which appropriate action shall be taken.

(20) [~~(12)~~] "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.

(21) [~~(13)~~] "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(22) [~~(14)~~] "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load".the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(23) [~~(15)~~] "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.

(24) [~~(16)~~] "Kentucky fire incident report" means a form for the reporting of fires which shall be [~~is~~] obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(25) [~~(17)~~] "LED" means level of exit discharge.

(26) [~~(18)~~] "NFiPA" means the National Fire Protection Association.

(27) [~~(19)~~] "Occupancy classification" means the various use groups as classified in the Kentucky Building Code and set forth in Section F-202.0 of this code [~~regulation~~].

(28) [~~(20)~~] "Place of assembly" means buildings or portions thereof used for gathering together fifty (50) or more persons for purposes set forth in F-202.0, Use Group A, of this code.

(29) [~~(21)~~] "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use or any combination of any commodity or material regulated by this code.

(30) [~~(22)~~] "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(31) [~~(23)~~] "Smoke barrier" means a continuous membrane, either vertical or horizontal, such as a wall, floor, approved door, or ceiling assembly, that is designed and erected with construction materials to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. These barriers shall have protected openings.

(32) "Smoke detector, multiple station" means single-station

smoke detectors that are capable of being interconnected in a way that the actuation of one (1) causes all integral or separate audible alarms to operate.

(33) "Smoke detector, single station" means an assembly incorporating the detector, the control equipment and the alarm-sounding device in one (1) unit, operated from a power supply either in the unit or obtained at the point of installation.

(34) [~~(24)~~] "Smoking" means a lighting, igniting, holding or possession of any lighted cigar, cigarette or pipe.

(35) [~~(25)~~] "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

(36) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a pressure switch on a dry pipe sprinkler system, etc.).

(37) [~~(26)~~] "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in a manner as to endanger the safety of any person or property.

(38) [~~(27)~~]"Use group" means the classification of a building or structure based on the purpose for which it is intended to be used.

(39) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals that pertain to a fire emergency.

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1990, 8th Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this administrative regulation, with specific changes to the BOCA Code set forth in Sections 3 through 25 [~~18~~] of this regulation. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) Amend subsection F-100.1 to read as follows: "F-100.1 Title: These administrative regulations as set forth herein shall be known as the Kentucky Standards of Safety (Fire Prevention Code) and are herein referred to as same or as "this code"."

(2) Create a new subsection to read as follows: "F-100.5 Intent of Code: It is the express intent of this code to provide a reasonable degree of safety for human life. Therefore, where the purpose of any provision of this code [~~regulation~~] can be fulfilled by other means, the specific requirements of this code may be modified by the fire code official to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical. Nothing in this code is intended to invalidate any lawfully adopted local government ordinance."

(3) Create a new subsection, "F-100.6 Continuation of Use" to read as follows:

(a) "F-100.6.1 The use and occupancy of any building which was constructed after the implementation of the Kentucky Building Code and for which there has been issued a lawful certificate of use or occupancy by the building code official may be continued without change so long as it is maintained and used as originally permitted and approved."

(b) Create a new subsection, F-100.6.1.1 to read as follows: "F-100.6.1.1 A condition or installation which was not constructed in accordance with applicable provisions of the edition of the Kentucky Building Code which was in effect when it was constructed, shall be considered an unlawful use or occupancy subject to F-100.6.2 and other applicable provisions of this code."

(c) [~~(b)~~] "F-100.6.2 The use and occupancy of a [~~any~~] building, other than a building covered by F-100.6.1, existing on the date of adoption of this code may be continued without change except as may be specifically covered by this code and deemed necessary by written decision of the fire code official for the life safety of the occupants and the public under Article 1 and 4 of this code."

(4) Create a new subsection, "F-100.7 Change in Use" to read as follows:

(a) "F-100.7.1 It shall be unlawful to make any change in the use of any structure or portion thereof with the potential to create a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without the written approval of the building official if [~~when~~] required by the Kentucky Building Code."

(b) "F-100.7.2 Any proposed new use not subject to the Kentucky Building Code shall comply with the provisions of this code relating to the new use, as required by the fire code official."

(5) Create subsection F-100.8 to read as follows: "F-100.8 Certificate of Use and Occupancy. If the fire code official finds an existing building or facility to be in substantial compliance with the intent of this code and [~~that~~] there are no violations of any order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use and occupancy of the building or facility and that use may continue without change as allowed by F-100.6.1. Upon request, the building code official shall cooperate with the fire code official, pursuant to Section 106 of the Kentucky Building Code, in assessing existing buildings for relative fire safety."

(6) Amend subsection F-101.2 to read as follows: "F-101.2 Existing buildings: Buildings built under, and in full compliance with, the codes in force at the time of construction or alteration [~~thereof,~~] and that have been properly maintained and used as originally permitted, shall be exempt from the requirements of this code pertaining to any of the following matters:

1. Fire protection of structural elements.

2. Exits required, except as provided for existing buildings under this code.

3. Isolation of hazardous operations and mixed uses; provided, however, that the fire code official shall require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where they are necessary to provide safety to life and property. In lieu of requiring the installation of safety devices or systems or if [~~when~~] necessary to secure safety in addition thereto, the fire code official shall prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property."

(7) Amend subsection F-101.3 to read as follows: "F-101.3 Application of building code: The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code and any alterations, additions or changes in buildings required by the provisions of this code which are within the scope of the Kentucky Building Code shall be made in accordance with the standards set forth therein."

(8) Delete subsections F-101.4 and F-101.4.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(9) Amend subsection F-101.6 to read as follows: "F-101.6 Compliance Alternatives:

(a) "F-101.6.1 If this code requires a particular system, condition, arrangement, material, equipment, or any other particular provision, the fire code official may grant alternatives if he finds that the alternative(s) are consistent with the intent of this code to provide adequate protection for life safety. The decision shall be written and shall provide a reasonable time to comply with the terms of the alternatives."

(b) "F-101.6.2 An application for an alternative may be filed with the fire code official by the owner or occupant and shall be accompanied by evidence, letters, statutes, results of tests or other supporting information as may be required to justify the request. The fire code official shall keep a record of action on applications and a signed copy of the fire code official's decision shall be provided for the applicant. Acceptance of an [~~any~~] alternative by the fire code official shall signify compliance with this code under the provision for which an alternative is offered. Failure of the property owner or occupant to comply with the alternatives granted shall void the alternative."

(10) Create subsection "F-101.7 Exempted Facilities" to read as follows:

(a) "F-101.7.1 State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources or the Department of Corrections shall not be [~~Corrections Cabinet are not required~~] to comply with the provisions of the fire prevention code if they are inspected and approved by the Office of the State Fire Marshal in accordance with federally mandated codes or the edition of NFiPA Pamphlet #101 (The Life Safety Code) under which the facility was initially approved. This code shall not make changes [~~regulation makes no change~~] in the standards previously applicable to these facilities."

(b) "F-101.7.2 This code shall [~~does~~] not apply to single family dwellings."

(11) Amend F-104.1 to read as follows: "F-104.1 Enforcement officer: It shall be the duty and responsibility of the State Fire Marshal, his designee, or local fire code official acting pursuant to lawful ordinance adopting this code to enforce the provisions of the fire prevention code as herein set forth. The designated enforcement officer of this code is herein referred to as the fire code official."

(12) Amend subsection F-104.5 by changing the reference of Section F-112.0 to Section F-108.0.

(13) [~~(12)~~] Create a new subsection to read as follows: "F-104.9 Interpretations: Formal interpretations of the provisions of this code shall be issued by the State Fire Marshal upon written request, and a record of these interpretations shall be maintained by the State Fire Marshal and regularly communicated to [~~all~~] persons who purchased the Fire Prevention Code book and others who are registered with the State Fire Marshal to be on the mailing list. These interpretations shall be used by all fire code officials to provide consistency in the understanding and enforcement of this Code. Upon adoption of these Standards of Safety by any unit of local government, pursuant to KRS 227.320, all interpretations of the Standards of Safety promulgated by the commissioner shall be interpreted likewise by the State Fire Marshal and the interpretations shall be used by all local fire code officials in the understanding and enforcement of this Code."

(14) [~~(13)~~] Delete subsections F-105.6; F-105.7 and F-105.8 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(15) [~~(14)~~] Amend subsection F-106.2 to read as follows: "F-106.2 Permits required: Local permits, if adopted by city or county ordinance, shall be obtained from the local fire code official according to the local adopting legislation. Inspection or permit fees, if any, shall be stipulated in the local adopting legislation. Permits shall [~~at all times~~] be kept in the premises designated therein and shall [~~at all times~~] be subject to inspection by the fire code official."

(16) [~~(15)~~] Create subsection F-106.8 to read as follows: "F-106.8 The State Fire Marshal shall not become involved in the local permit process, and if [~~where~~] local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute, administrative [~~or~~] regulations and this code and inspected accordingly."

(17) [~~(16)~~] Amend Section "F-108.0 Means of Appeal" to read as follows:

(a) "F-108.1 Local Appeals: A [~~Any~~] party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "F-108.1.1 State Fire Marshal appeals: Appeals from decisions of the State Fire Marshal or by his delegated authority, pursuant to KRS 227.230, shall be made in accordance with the provisions of KRS Chapter 227."

(18) [~~(17)~~] Amend subsection F-109.3 to read as follows: "F-109.3 Unsafe buildings. [~~All~~] Buildings and structures that are or shall [~~hereafter~~] become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. The fire code official or authorized fire chief shall order the unsafe conditions to be remedied in accordance with this code [~~regulation~~] or removed."

(19) [~~(18)~~] Amend subsection F-111.2 to read as follows: "F-111.2 Failure to correct violations: If the notice of violation is not complied with within the time specified by the fire code official, the fire code official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto."

(20) Create a new subsection, F-111.5, to read as follows: "F-111.5 Compliance with a later edition of a standard required by this code shall be deemed equivalent and may be used by the owner in lieu of the edition specified in Appendix A."

(21) [~~(19)~~] Delete subsections F-112.0 through F-112.7 from Article 1 of the 1990 edition of the BOCA National Fire Prevention Code in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table F-202 below.

TABLE F-202

1.	Use Group A	assembly (See Section F-202.2)
2.	Use Group B	business (See Section F-202.3)
3.	Use Group E	educational (See Section F-202.4)
4.	Use Group F	factory and industrial (See Section F-202.5)
5.	Use Group H	high hazard (See Section F-202.6)
6.	Use Group I	institutional (See Section F-202.7)
7.	Use Group M	mercantile (See Section F-202.8)
8.	Use Group R	residential (See Section F-202.9)
9.	Use Group S	storage (See Section F-202.10)
10.	Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "F-202.2.1 General. All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "F-202.2.2 Use Group A-1, theaters: This use group shall include [~~all~~] theaters and [~~all~~] other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including

theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code listed in Appendix A."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include [all] buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) "F-202.2.4 Use Group A-3 structures: This use group shall include [all] buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include [all] buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums, stadiums, amusement park structures and fair or carnival structures. These structures shall comply with the provisions of the Kentucky Building Code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: [All] Buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: [All] Buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "F-202.5.1 General. [All] Buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "F-202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "F-202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "F-202.6.1 General: [All] Buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "F-202.6.2 Exceptions: The following shall not be classified as Use Group H but shall be classified in the usage group which they most nearly resemble:

1. A [Any] building or portion of a building containing less than the exempt amount of those materials shown in Table F-202.6 when maintained in accordance with this code.

2. Buildings containing rooms conforming to the requirements of Article 6 of the Kentucky Building Code listed in Appendix A.

3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m^3) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

4. Rooms used for preparation or storage of food products for retail sale on the premises.

5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

6. Liquor stores and distributors without bulk storage.

7. The storage or use of materials for agricultural purposes for use on the premises.

8. Closed systems housing flammable or combustible liquids or gases used for the operations of machinery or equipment.

9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, if [provided] this use is separated from all other areas of the building by one (1) hour fire-resistance rated construction.

10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).

11. Refrigeration systems.

12. Tire retail stores without bulk storage.

13. Any other building or portion thereof which is exempt from this classification by the Kentucky Building Code listed in Appendix A."

(c) The following table shall apply to this section:

"F-TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS, LIQUIDS AND CHEMICALS

	Material	Maximum quantities[a]
1.	Flammable Liquids	
	Class 1-A	30 gal.[b]
	Class 1-B	60 gal.[b]
	Class 1-C	90 gal.[b]
2.	Combustible liquids[c]	
	Class II	120 gal.[b]
	Class III-A	250 gal.[b]
3.	Combination flammable liquids[a]	120 gal.[b]
4.	Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70°F.
5.	Liquefied flammable gases	60 gal.
6.	Combustible fibers-loose	100 cu. ft.
7.	Combustible fibers-baled	1,000 cu. ft.
8.	Flammable solids	500 lbs.
9.	Unstable material	No exemptions
10.	Corrosive liquids	55 gal.
11.	Oxidizing material-gases	6,000 cu ft.
12.	Oxidizing material-liquids	50 gal.
13.	Oxidizing material-solids	500 lbs.
14.	Organic peroxides	10 lbs.

15.	Nitromethane (unstable materials)	No exemptions
16.	Ammonium nitrate	1,000 lbs.
17.	Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18.	Highly toxic material and poisonous gas	No exemptions
19.	Smokeless powder	20 lbs.[d]
20.	Black sporting powder	5 lbs.[d]

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.

Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.

Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in Appendix A shall be permitted.

Note d. Maximum quantities in the amount specified by NFiPA 495 shall be permitted when stored in accordance with NFiPA 495 listed in Appendix A.

Note e. 1 gallon = 0.00379 m^3, 1 cubic foot = 0.028 m^3, 1 pound = 0.454 kg."

(d) "F-202.6.3 Multiple hazards. Buildings in this category shall be further classified H1 - H4 as set forth in the Kentucky Building Code and materials representing hazards that are classified in one or more of the Use Group H subuses shall conform to the code requirements for each of the use groups so classified."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 General. Licensed institutional facilities shall conform to Section F-101.2.1."

(b) "F-202.7.2 Jails. Jails shall conform to the requirements of the Corrections Cabinet. State prisons shall conform to the requirements of the Life Safety Code, NFiPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: [~~All~~] Buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to these purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the Kentucky Building Code listed in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: [~~All~~] Buildings and structures, or parts thereof, shall be classified in Use Group R in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures. This use group shall include [~~all~~] hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include [~~all~~] multiple-family dwellings (apartment buildings) having more than two (2) dwelling units, except as provided in Section F-202.9.4 and shall also include [~~all~~] boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.3.1 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.4 Use Group R-3 structures: This use group shall include [~~all~~] buildings arranged for the use of one (1) or two (2) family dwelling units adjacent to or located above one another if [~~provided~~] they are completely separated by fire-resistance rating, if required by the Kentucky Building Code, and each unit has independent means of egress."

(f) "F-202.9.5 Use Group R-4 structures: This use group shall include [~~all~~] detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: [~~All~~] Buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. These uses shall be classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES. F-202.11.1 General: [~~All~~] Buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the Kentucky Building Code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible container or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. These receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-303.1 to read as follows: "F-303.1 General: Any person using a torch or other flame or heat producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after each use of the torch, flame or heat producing device."

(3) Create subsection F-304.2 to read as follows: "F-304.2 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: If [~~Where~~] approved by the fire code official."

(4) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall

conform to the requirements of this code and NFiPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(5) Amend subsection F-306.1 as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in a quantity to constitute a fire hazard, unless the materials are flame retardant."

(6) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: A [~~Any~~] parade float utilizing special effects [~~which are~~] designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(7) Create a new subsection, F-306.4, to read as follows: "F-306.4 Decorations. Furnishings or decorations of an explosive or highly combustible character shall not be used."

(8) Amend Section F-307 as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(9) Delete subsection F-307.3.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(10) Amend Section F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits of residue and grease in the system whenever buildup of residue and grease is apparent."

(11) Delete subsection F-310.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(12) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

(13) Create a new subsection, F-310.3, to read as follows: "F-310.3 An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(14) Create a new subsection, "F-310.4 Cleaning", to read as follows:

(a) "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

(b) "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

(c) "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

(d) "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(15) Amend subsection F-311.1 to read as follows: "F-311.1 General: All required fire-resistance rated doors or smoke barriers shall be maintained in good working order including the hardware necessary for its proper operation. The use of door stops, wedges and other unapproved hold-open devices shall be prohibited. All self-closing and automatic-closing devices shall be of an approved type. Fire doors or smoke barriers may be maintained in an open position if an approved automatic-closing device actuated by automatic smoke detectors are also to be installed."

(16) [~~(15)~~] Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions exist to make smoking a fire hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section F-701.6."

(17) [~~(16)~~] Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, noncombustible ash trays or match receivers [~~there~~] shall be provided on each table and at other convenient locations [~~noncombustible ashtrays or match receivers~~]. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(18) [~~(17)~~] Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus: All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that [~~all~~] buildings and water supplies on the premises are at all times accessible to fire apparatus. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the locally authorized fire department of the jurisdiction. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by local ordinance on recommendation of the local fire department. A [~~No~~] person shall not park a motor vehicle on, or otherwise obstruct, a [~~any~~] required fire lane and [~~no person shall park a~~] motor vehicles shall not be parked within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(19) [~~(18)~~] Amend subsection F-313.2 to read as follows: "F-313.2 Vertical clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, if [~~provided~~] the reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(20) [~~(19)~~] Amend subsection F-314.1 to read as follows: "F-314.1 Abatement of electrical hazards: If [~~When any~~] electrical hazards are identified, the conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in accordance with NFiPA 70 listed in Appendix A."

(21) [~~(20)~~] Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(22) [~~(21)~~] Delete subsection F-315.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(23) [~~(22)~~] Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain fuels prohibited. [~~No person shall use~~] Solid fuel or Class I flammable liquids shall not be used as fuel for an asphalt (tar) kettle."

(24) [~~(23)~~] Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

(a) "F-315.6.1 Open flame. Open flame in an asphalt (tar) kettle while in transit shall be [~~is~~] prohibited."

(b) "F-315.6.2 Latching devices. Kettle doors or lids shall be closed and secured while in transit."

(c) "F-315.6.3 Asphalt (tar) kettles on trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck shall be [~~is~~] prohibited. Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFiPA 385 listed in Appendix A [~~, Standard for Tank Vehicles for Flammable and Combustible Liquids~~]."

(25) [~~(24)~~] Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: If [~~When~~] required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for the activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to

handle, use or display the film."

(26) [~~(25)~~] Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: If [~~When~~] required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty- five (25) pounds (11.35 kg) of cellulose nitrate (phroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(27) [~~(26)~~] Create a new Section, "F-319.0 Reporting Fires and Hazardous Substances" and subsections F-319.1 through F-319.3.1 to read as follows:

(a) "F-319.1 Reporting emergency conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

1. "F-319.1.1 Unfriendly fires. If an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

2. "F-319.1.2 Hazardous materials. If [~~Where~~] state or local legislation has been adopted specifying reportable quantities of hazardous materials released, notification shall conform to the provisions of legislation."

(b) "F-319.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.

2. A fire or fire related fatality (including vehicles and single family dwellings).

3. A fire or fire related injury serious enough to become a fatality.

4. A fire involving major structural damage in a regulated building, including:

a. [~~All~~] Institutional, educational, state owned or state leased and high hazard occupancies.

b. [~~All~~] Business, mercantile and industrial occupancies having a capacity over 100 persons.

c. [~~All~~] Assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(c) "F-319.3 Fire Department Operations at Emergencies. The highest ranking fire department officer conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct [~~all~~] operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of these operations, including the investigation of the cause of the emergency or the situation which required fire department notification, the highest ranking officer may control or prohibit the approach to the scene of the emergency by any vehicle, vessel, thing or person."

(d) "F-319.3.1 Fire scene control. [~~No person shall obstruct~~] The operations of the fire department shall not be obstructed in connection with the extinguishment of any fire, or the actions relative to other emergencies, or [~~disobey any~~] lawful commands of the highest ranking officer in charge of the emergency [~~or any part thereof~~], or [~~any lawful~~] orders of a police officer assisting the fire department shall not be disobeyed."

Section 6. Article 4. (1) Create a new subsection "F-400.4 Purpose and Intent" to read as follows:

(a) "F-400.4.1 Every building or structure shall be provided with exits of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford the [~~all~~] occupants convenient facilities for escape."

(b) "F-400.4.2 In existing buildings, it is not always practical to strictly apply the provisions of this code. Physical limitations may require disproportionate effort or expense with little increase in life safety. In these cases, the fire code official shall be satisfied that reasonable safety shall be [~~is~~] assured."

(c) "F-400.4.3 In an existing building, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life even though the circumstances are not literally in compliance with the code."

(d) "F-400.4.4 The requirements for existing buildings may be modified if their application clearly would be impractical in the judgment of the fire code official, but only where it is clearly evident that a reasonable degree of safety shall be [~~is~~] provided."

(2) Create a new subsection F-400.5 to read as follows: "F-400.5 Alternatives and Modifications. Compliance with this section may be used by the fire code official in lieu of other specific provisions of the code to satisfy the intent of the code as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and other appropriate circumstances. Because all building systems interact with each other, any consideration of compliance alternatives shall [~~should~~] take into account all existing and proposed conditions to determine their original or continued acceptability.

These alternatives are not all-inclusive and shall [~~do~~] not preclude consideration and approval of other appropriate alternatives by the fire code official. Buildings with alternative fire protection features accepted by the fire code official shall be considered as conforming with this [~~the~~] code."

(a) "F-400.5.1 Inadequate number of exits:

1. Provide connecting fire-exit balconies, acceptable to the enforcement authority, between buildings; or

2. Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority; or

3. Provide an exterior fire escape(s), acceptable to the enforcement authority, if [~~where the~~] providing [~~of~~] enclosed interior or enclosed exterior stairs is not practical; or

4. Install approved smoke detectors or fire suppression system."

(b) "F-400.5.2 Excessive travel distances to exits:

1. Install [~~an~~] approved interconnected smoke detectors [~~detection system~~] throughout the building; or

2. Install an approved complete automatic fire suppression system; or

3. Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority; or

4. Increase the fire resistance rating of corridor walls and doors acceptable to the enforcement authority; or

5. Provide additional approved means of escape."

(c) "F-400.5.3 Unenclosed or improperly enclosed exit stairs to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected [a] smoke detectors [~~detection system~~]."

(d) "F-400.5.4 Inadequate fire separation walls or smoke barriers to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected [a] smoke detectors [~~detection system~~]."

(e) "F-400.5.5 Acceptance of Alternatives. The acceptance of any alternative(s) shall be in writing and shall be deemed to satisfy the intent of this code as it relates to the provisions for which the alternative(s) is offered as listed below:

1. Any alternative(s) specifically listed in F-400.5.1 through F-400.5.4 and complied with as set forth therein;

2. Any other alternative which is accepted or allowed by the fire code official.

(3) Create a new subsection F-400.6 to read as follows: "F-400.6 Upgrading of Existing Buildings. If, upon inspection, the fire code official finds that enforcement of this code requires alterations to a building, he shall identify the sections of this code which require correction and specify the type of correction necessary in order to achieve compliance. This decision shall be in writing to the owner or occupant and shall include a reasonable time for completion of the corrections. Failure of the owner or occupant to make the corrections described by the fire code official within the time frame specified shall be considered a violation subject to further action pursuant to F-111.2. Any party aggrieved by a decision of the fire code official may appeal in accordance with F-108.

(4) Amend subsection F-401.1 to read as follows: "F-401.1 Number of Means of Egress: Except as accepted in writing by the fire code official pursuant to Section F-101.6 or F-400.5 or as permitted in any Exception No. 1 - 4 of this section, every floor area of all occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

500 or fewer persons - two (2) means of egress

501 - 1000 persons - three (3) means of egress

1001 or more persons - four (4) means of egress

Exception No. 1 - Living units in Use Group R-2 (apartment buildings, rooming houses and multiple single family dwelling units)

Living Units. A living unit may have a single exit if [~~provided~~]:

a. That living unit has an exit door directly to the street or yard at ground level; or

b. That living unit has direct access to an outside stair serving a maximum of two (2) units both located on the same floor; or

c. That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein; or

d. Any individual living unit below the fourth story may have an outside window openable from the inside without the use of tools or special knowledge as the second exit.

Building Exits. A building of three (3) stories or less may have a single exit under the following conditions:

a. The stairway is completely enclosed by smoke barriers; and

b. Doors protecting all openings into the stairs are approved solid wood core or steel doors with self-closing devices; and

c. The stairway does not serve more than one-half (1/2) story below the level of exit discharge; and

d. All corridors serving as access to exits are smoke resistant; and

e. There is not more than approximately thirty-five (35) feet of travel distance from the entrance door of any living unit to an exit; and

f. Three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

Fire Tower Exits. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Travel shall be on the same floor level or, if the traversing of stairs is required, stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if the exit is enclosed and serves no other levels and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within seventy-five (75) feet.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of egress shall be permitted from any story or section, if [~~provided that~~] the exit can be reached within the distance allowed as common path of travel."

(5) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions[a]
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2)

floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m^2.

(6) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(7) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

(a) F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

(b) F-401.3.2 Increased occupant load: The occupant load permitted in any building or portion thereof shall be [is] permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on the modified number. If [Where] required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. If [Where] required by the fire code official, the diagram shall be posted.

(c) F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three (3) square feet (0.28 m^2) of occupiable floor space.

(d) F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

(e) F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

(f) F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

TABLE F-401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net
Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m^2

(g) F-401.3.7 Assembly buildings: [All] Buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. If [Where] there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

(h) F-401.3.8 Exit capacity. The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

(i) F-401.3.9 Minimum width: The width of each means of egress component shall computed in accordance with Table 401.3.1 for the required capacity of the component, but shall not be less than the minimum width as prescribed by this code for each component.

TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT

Use Group	Without fire suppression system (inches per person)[a] Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2

Use Group	With fire suppression system (inches per person)[a] Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(8) Amend subsection F-401.4 to read as follows: "F-401.4 Corridor enclosure. [All] Corridors serving as an exit access shall be constructed of materials which provide an effective smoke barrier.

(9) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system.

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(10) Create a new subsection, F-401.6 Panic hardware, to read as follows: "F-401.6 Panic hardware: Doors equipped with latching devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with panic hardware in compliance with the Kentucky Building Code listed in Appendix A."

(11) [(10)] Amend Section F-403 by deleting subsections F-403.1, F-403.2 and F-403.3 and replacing with the following new subsections:

(a) "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

(b) "F-403.1.1 Artificial lighting. Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at places and for periods of time as required to maintain the illumination to the minimum foot-candle values herein specified."

(c) "F-403.1.2 Floor lighting. The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theaters, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during periods of the performances to values not less than one-fifth foot candle."

(d) "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, shall [will] not leave any area in darkness."

(e) "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, if [provided that] all applicable requirements of this section for illumination are also met."

(f) "F-403.4 Sources of Illumination. Illumination of means of egress shall be from a source of reasonably assured reliability, such as public utility electric service."

(g) F-403.4.1 Electricity. If [Where] electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the [National Electrical Code,] NFiPA 70 listed in Appendix A.

(h) F-403.4.2 Battery powered. A [No] battery operated electric light nor any type of portable lamp or lantern shall not be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-403.5.

(i) F-403.4.3 Other lighting sources. [No] Luminescent, fluorescent, or reflective material shall not be permitted as a substitute for any of the required illumination herein specified."

(j) "F-403.5 Emergency lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: [All] Places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes shall be [are] exempt."

(k) "F-403.5.1 Continuity. If [Where] maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. If [Where] emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not permitted."

(l) "F-403.5.2 Duration. Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

(m) "F-403.5.3 Approved batteries. Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in lights or units shall be approved for their intended use and shall comply with the [National Electrical Code,] NFiPA 70, listed in Appendix A."

(n) "F-403.5.4 Power failure. An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

(o) "F-403.5.5 Automation of system. An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(12) [(11)] Amend subsection F-404.4 to read as follows: "F-404.4 Single- and multiple-station smoke detectors: A minimum of one (1) approved single-station or multiple-station smoke detector shall be installed in each guestroom, suite or sleeping area in buildings of Use Group R-1 and in dwelling units in the immediate vicinity of the bedrooms in buildings of Use Groups R-2 and R-3. In buildings of Use Group R-3, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed in the upper level shall suffice for the adjacent lower level if [provided that] the lower level is less than one (1) full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed on both levels. [All] Detectors shall be installed in accordance with NFiPA 74 listed in Appendix A; except that the use of smoke detectors installed in existing occupancies prior to the effective date of this Code which are installed and maintained in operable condition according to manufacturer's instructions, may be continued without change."

(13) [(12)] Amend Section F-404.5 to read as follows: "F-404.5 Manual alarms. Fire Protective Signaling Systems (manual alarms) shall be required in all buildings of Use Group E; [all] buildings of Use Group B if [when] three (3) or more stories in height; [all] buildings of Use Group R-1; and [all] buildings of Use Group R-2 if [when] four (4) or more stories in height.

Exceptions: 1. [Exception No. 1-] Buildings of Use Group B less than seven (7) stories in height equipped with a complete approved automatic sprinkler system.

2. [Exception No. 2-] Buildings of Use Group R-1 if [where] each guest room has exterior exit access and the building is not greater than three (3) stories in height."

(14) [(13)] Create a new Section "F-407.0 Emergency Generators" to read as follows:

(a) "F-407.1 Conduct or Witness Test. The fire code official may

conduct or witness a test on the complete system upon installation."

(b) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFiPA 70 listed in Appendix A."

(c) "F-407.3 Battery Systems Maintenance. If ~~[Where]~~ batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(d) "F-407.4 Written Record. A written record shall be kept on tests and maintenance."

(e) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(15) ~~[(14)]~~ Create a new Section "F-408.0 Storage Room Separations" to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in quantities deemed hazardous by the fire code official in Use Groups A, B, E, R-1 and R-2 in excess of fifty (50) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating, be protected by an approved automatic fire suppression system or comply with alternatives accepted by the fire code official pursuant to Section F-400.5."

(16) ~~[(15)]~~ Create a new Section "F-409.0 Marking of Means of Egress" to read as follows:

(a) "F-409.1 Where required. Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs.

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Marking of Signs. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Location and design of signs. Every required sign designating an exit or way of exit access shall be so located and of size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Illumination shall be continuous as required under the provisions of Section F-403.0, Illumination and Signs, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(f) F-409.6 Information signs. A sign shall be provided at each floor landing in all interior stairways more than three (3) stories above grade designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels in buildings more than seventy-five (75) feet (22860 mm) above the lowest level of fire department access shall be marked with approved signs reading as follows: Use Stairways in Case of Fire - Do Not Use Elevators."

(17) ~~[(16)]~~ Create a new Section, "F-410.0 Special Occupancy Requirements" to read as follows:

(a) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in Chart F-410.1.1."

CHART F-410.1.1

Use group	Type of Construction Noncombustible Type 1 Protected 1A	Type 1 Protected 1B	Type 2 Protected 2A	Type 2 Protected 2B	Type 2 Unprotected 2C
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St.30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction Noncombustible/Combustible Type 3 Protected 3A	Type 3 Unprotected 3B	Type 4 Heavy Timber 4	Combustible Type 5 Protected 5A	Unprotected 5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-4 Assembly, churches	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'

NL = Not limited.

Exceptions: 1. [i] Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.

2. [Exception: ii] Places of assembly with an occupant load in excess of fifty (50) may be located on the second story if approved by the fire code official pursuant to F-400.5.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Kentucky Building Code listed in Appendix A."

(b) "F-410.2 Educational."

1. "F-410.2.1 Corridor Width. Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Closets. Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Smoke resistance of interior corridors. Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors.

Exceptions:

1. When all classrooms served by the corridor have an exterior exit.

[Exception] 2. When the building has an approved automatic sprinkler system approved by the State Fire Marshal.

[Exception] 3. When corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Windowless rooms. Approved emergency lighting shall be installed in windowless classrooms."

(c) "F-410.3 Hotels and Dormitories." "F-410.3.1 Separation of corridors. Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel door and be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring-loaded hinges are acceptable."

(d) "F-410.4 Apartments."

1."F-410.4.1 Protection of corridors. Doors between living units and interior exit access corridors shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exceptions:

1. When the building has an approved sprinkler system in the corridor.

[Exception] 2. When there are approved interconnected smoke detectors in each corridor on every level. Detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 Doors. All doors, rated or not, between living units and corridors shall be self-closing. [All] Self-closing devices used for this purpose shall be approved by the fire code official. Spring loaded hinges are acceptable. Exception: If [Where] accepted by the fire code official pursuant to Section F-101.6 or F-400.5."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Required means of egress. Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Kentucky Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(e) "F-410.6 Mercantile."

1. "F-410.6.1 A [No] dwelling unit shall not [may] have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 Dwelling unit above mercantile prohibited. A [No] multiple dwelling occupancy shall not be located above a mercantile occupancy.

Exceptions:

1. If [When] the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

[Exception] 2. If [When] approved by the fire code official."

3. "F-410.6.3 Door swing. Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(f) "F-410.7 Business."

[1.] "F-410.7.1 Limitation of dwelling unit over business use. A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction.

Exception: If [When] approved by the fire code official."

(g) [2.] "F-410.8 Mixed Uses."

[3.] "F-410.8.1 Dissimilar use groups. If [When] a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the Kentucky Building Code listed in Appendix A."

(h) Create a new subsection to read as follows: "F-410-9 Protection from spills in laboratory or research facilities: Laboratories and research facilities storing quantities of chemicals for use in laboratory research activities shall be provided with adequate spill control equipment. This shall include absorbent materials and neutralizing agents where applicable. This material shall be maintained in a suitable storage container in the storage area. Personnel protective equipment consistent with the hazard shall be available."

(i) Create a new subsection to read as follows: "F-410.10 Fuel gas for laboratory or research facilities: Fuel gas supply piping shall be in compliance with the applicable provisions of NFiPA 45 and NFiPA 54 listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance test: [All] Fire protection systems shall be tested in accordance with the requirements of this code and with the Kentucky Building Code listed in Appendix A. The tests shall be the responsibility of the owner or an authorized representative, and the fire code official shall be given an opportunity to be present. All tests required by this code and the standards listed in this code shall be conducted at the expense of the owner or the owner's representative."

(2) Create a new subsection to read as follows: "F-500.7 Inspections and Test Requirements: [All] Inspections and tests required by Sections F-503.0, F-504.0, F-505.0, F-506.0, F-507.0, F-508.0, F-509.0, F-511.0, F-512.0, F-514.0 and F-515.0 shall be conducted only by persons authorized or certified by the State Fire Marshal's Office and shall be recorded on forms approved by the State Fire Marshal's Office. Copies of the forms shall be sent to the State Fire Marshal upon request."

(3) Amend subsection F-508.3 to read as follows: "F-508-3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(4) Amend subsection F-509.3 to read as follows: "F-509.3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(5) Amend subsection F-511.1 to read as follows: "F-511.1 Periodic testing and inspection: All fire protective signaling systems shall be maintained in accordance with NFiPA 71 and 72 listed in

Appendix A and shall be periodically inspected and tested in accordance with Sections F-511.2 through F-511.3.

Exception: Manual fire alarm systems under F-519.1."

(6) Amend subsection F-511.2 to read as follows: "F-511.2 System test: Complete and satisfactory tests shall be made of all devices in accordance with the following:

1. At twelve (12) month intervals: all transmitters and circuit interfaces.

2. At twelve (12) month intervals: functional and operation testing of the voice/alarm signaling system and water-flow-actuated devices. For sprinkler water-flow alarm tests, an actual water flow, through the use of a test connection, shall be the method employed for testing the reliability of the sprinkler alarm unit as a whole.

3. At twelve (12) month intervals: gate valve supervisory switches, manual fire alarm boxes, combination night guard and fire alarm boxes, tank water level devices, building and tank water-temperature supervisory devices, and other sprinkler system supervisory devices.

4. At twelve (12) month intervals: remote annunciators, audible and visible alarm-indicating appliances, two (2) way telephones for the fire service, primary and secondary power supplies and all control panel functions.

5. Inspection and test of automatic fire detection devices shall be in accordance with Section 512.0."

(7) Amend subsection F-512.1 and create an exception to read as follows: "F-512.1 Periodic testing and inspection: All automatic fire detection systems shall be maintained in accordance with NFiPA 72E listed in Appendix A and periodically inspected and tested in accordance with Sections F-512.2 through F-512.10.

(8) Amend subsection F-512.4 to read as follows: "F-512.4 Restorable heat detectors: For restorable heat detectors, one (1) or more detectors on each signal-initiating circuit shall be tested at twelve (12) month intervals and different detectors shall be selected for each test. Within five (5) years, each detector shall have been tested. Exception: Pneumatic line-type heat detectors."

(9) Amend subsection F-512.5 to read as follows: "F-512.5 Pneumatic line-type heat detectors: All pneumatic line-type heat detectors shall be tested for leaks and proper operation at twelve (12) month intervals."

(10) Amend subsection F-512.6 to read as follows: "F-512.6 Nonrestorable line-type fixed-temperature heat detectors: Nonrestorable line-type fixed-temperature heat detectors shall be tested for alarm function at twelve (12) month intervals. The loop resistance shall be measured, recorded and compared with the loop resistance previously recorded. Any change in loop resistance shall be investigated."

(11) Amend subsection F-512.8, Smoke detector sensitivity, to read as follows: "F-512.8.1 Sensitivity testing: Smoke detection systems installed after December 31, 1992, shall be checked for sensitivity within one (1) year of installation and at two (2) year intervals thereafter. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be tested using either:

1. A calibrated test method; or

2. The manufacturer's calibrated sensitivity test instrument; or

3. Listed control equipment arranged for that purpose; or

4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or

5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(12) Create subsection F-512.8.2 to read as follows: "F-512.8.2 Installations prior to January 1, 1993: Smoke detection systems installed prior to January 1, 1993, in occupancies, with the exception of use Group E having no overnight sleeping quarters, shall be tested for sensitivity as follows: One (1) smoke detector or ten (10) percent, whichever is greater, on each defined zone shall be sensitivity tested at two (2) year intervals. For each detector the fails, two (2) additional detectors on the same zone shall be tested until a zero failure rate is attained on that zone. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be tested using either:

1. A calibrated test method; or

2. The manufacturer's calibrated sensitivity test instrument; or

3. Listed control equipment arranged for that purpose; or

4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or

5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(13) Create subsection F-512.8.3 to read as follows: "F-512.8.3 Nontestable systems: There is a large population of installed smoke detectors that were manufactured in compliance with previous product standards that did not require a means for testing sensitivity within an acceptable listed range. It is the intent of this code that these detectors shall not be tested against current product standards."

(14) Amend subsection F-512.10 to read as follows: "F-512.10 Flame detectors, fire-gas detectors and other fire detectors: All flame detectors, fire-gas detectors and other fire detectors shall be tested in a manner acceptable to the manufacturer at twelve (12) month intervals.

(15) [~~(3)~~] Amend the Exception in F-513.2 to read as follows: "Exception: The written log of tests as specified in Section F-504.1 shall not be required in buildings of Use Group R-2 or R-3."

(16) [~~(4)~~] Create a new "Section F-518.0 Commercial Kitchen Exhaust" to read as follows: "F-518.1 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(17) [~~(5)~~] Create a new "Section F-519.0 Manual Fire Alarm Systems" to read as follows: "F-519.1 Manual fire alarm systems inspection: Manual fire alarm systems within all buildings shall be checked monthly by the owner or owner's representatives. The use of the system for fire drill purposes shall be accepted as a test of only those parts of the system actually used in the drill procedure. Accurate logs shall be maintained on the premises indicating box number, location, data and type of device tested. Any defect, modification or repair shall be logged, and the log shall be available to the fire department."

Section 8. Article 6 is hereby adopted in its entirety and a new subsection created to read as follows: "F-602.4 Closing: All fire doors shall comply with Section F-311.0."

Section 9. Article 7. (1) Create a new subsection, "F-700.2 Fire Exit Drills" to read as follows:

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by this code, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of

established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership under the supervision of the owner-operator or administrator."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the fire code official."

(2) Amend subsection F-701.1 to read as follows: "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in effecting orderly exit of assemblages."

(3) Amend subsection F-701.2 to read as follows: "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the fire code official."

(4) Amend subsection F-701.3 to read as follows: "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300 or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools if [~~when~~] used for nonpublic events."

(5) Amend subsection F-701.4 to read as follows: "F-701.4 Open Flame Devices. [~~No~~] Open flame devices shall not be used in any assembly occupancy.

Exceptions:

1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

[~~Exception~~] 2. Open flame devices may be used on stages when a necessary part of theatrical performances, if [~~provided~~] adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

[~~Exception~~] 3. Gas lights may be permitted if [~~provided~~] adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

[~~Exception~~] 4. Candles may be used on tables if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

[~~Exception~~] 5. As permitted in F-701.5."

(6) Create new subsection F-701.5 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fueled by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used if [~~provided~~] adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted if [~~provided that~~] necessary precautions are taken and subject to the approval of the fire code official.

(7) Create a new subsection "F-701.6 Smoking" to read as follows:

(a) "F-701.6.1 For purposes of abatement of fire, smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

(b) "F-701.6.2 [~~Smoking~~] In rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

(c) "F-701.6.3 A [~~No~~] person shall not smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

(d) "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall conform to the requirements of F-312.6."

(8) Create a new subsection "F-701.7 Furnishings, Decorations, and Stage Scenery" to read as follows:

(a) "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

(b) "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

(c) "F-701.7.3 There shall be no exposed foamed plastics."

(9) Create a new subsection "F-701.8 Coat Racks" to read as follows: "F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(10) Create a new subsection F-701.9 to read as follows: "F-701.9 Unvented fuel fired heaters shall not be used in assembly occupancies."

(11) Amend Section F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

(a) "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

(b) "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

(c) "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or

other members of the staff. If the teachers are to search, it shall [~~should~~] be done after they have led [~~joined~~] their classes to the preceding lines."

(d) "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to obtain clothing after the alarm is sounded, even if [~~when~~] in home rooms, due to [~~on account of~~] the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

(e) "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. These points shall be sufficiently far away from the building and from each other [~~as~~] to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

(f) "F-702.1.6 If it is [~~Where~~] necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic during the period of the drill."

(g) "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(12) Amend subsection F-702.3 to read as follows: "F-702.3 Records: A record of fire exit drills shall be kept on the premises and persons in charge of these occupancies shall, upon request, file written reports with the code official, giving the following information:

1. Time of drill.
2. Date of drill.
3. Weather conditions when occupants were evacuated.
4. Number of occupants evacuated.
5. Total time for evacuation.
6. Other information relevant to the drill.

(13) [~~(12)~~] Create a new subsection "F-702.5 Fire Alarm Signals" to read as follows:

(a) "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

(b) "F-702.5.2 If [~~Whenever any of~~] the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or other facilities as are available."

(c) "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. These signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

(d) "F-702.5.4 Inspection."

(e) "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

(f) "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(14) [~~(13)~~] Delete Section F-703, F-704 and F-705 in their entirety.

(15) [~~(14)~~] Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel and Motel Emergency Organization."

1. "F-707.1.1 Hotel and Motel Employee Duties. [~~All~~] Employees of hotels and motels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Monthly drills. Drills of the emergency organization shall be held at monthly intervals, covering the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

3. "F-707.1.3 Emergency Duties in Hotels, Motels and Dormitories. The owner or other person in control of the premises shall take immediate action to control any fire on the premises. Upon discovery of fire, some or all of these duties will become immediately imperative, the number and sequence depending upon the exact situation encountered:pAlarm s

Notify office.
Notify public fire department.
Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.
Assist occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons.
Search rooms to be sure all occupants have escaped.
Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.
Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.
Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.
Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.
Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.
Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(b) "F-707.2 Dormitory Drills."

[~~1.~~] "F-707.2.1 Fire exit drills shall be conducted quarterly in accordance with F-701.0."

(c) "F-707.3 Emergency instructions for Residents or Guests of Hotels, Motels or Dormitories."

1. "F-707.3.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.3.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(d) "F-707.4 Emergency Instructions for Residents of Apartment Buildings."

[~~1.~~] "F-707.4.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(e) "F-707.5 Furnishings and Decorations."

[~~1.~~] "F-707.5.1 New draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-306.0."

(f) "F-707.6 Unvented fuel-fired heaters shall not be used in residential occupancies. Exception: Listed and approved unvented fuel-fired heaters in one (1) and two (2) family dwellings."

(g) "F-707.7 Gas Grills on balconies of multifamily dwellings."

[~~1.~~] "F-707.7.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily

dwelling of three (3) or more living units located one (1) above the other. (See NFiPA 58 listed in Appendix A [~~089, Section 3-4.9.2~~])"

(16) [~~(15)~~] Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 Training. In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Fire extinguishers. Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(17) [~~(16)~~] Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures and shall hold practice drills periodically where practicable."

(b) F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

Section 10. Article 8 is adopted in its entirety. [~~Articles 8 through 15 are adopted in their entirety unchanged.~~]

Section 11. Article 9. Amend subsection F-901.1 to read as follows: "F-901.1 General: The layout, arrangement and construction of buildings and structures in which spraying or dipping operations are done shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. If provisions of this article do not specifically cover conditions and operations, buildings and structures and their service equipment shall be maintained in proper operating condition as required by this code and NFiPA 33 and 34 listed in Appendix A."

Section 12. Article 10 is adopted in its entirety.

Section 13. Article 11. Amend subsection F-1101.1 to read as follows: "F-1101.1 General: The layout, arrangement and construction of buildings and structures in which the process of ripening or coloring of crops is conducted shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. Buildings and structures and their service equipment shall be maintained in a safe and sound condition as required by that code."

Section 15. [~~11.~~] Article 16. (1) Delete subsections F-1600.1 through F-1602.2 from Article 16 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(2) Create a new subsection, F-1603.3, to read as follows: "F-1603.3 Storage and handling: The storage and handling of all flammable and combustible liquids at gas or oil wells and related production facilities shall comply with the requirements of NFiPA 30 referenced in Appendix A."

Section 16. [~~12.~~] Article 17. (1) Delete subsection F-1700.2 in its entirety.

(2) Amend subsection F-1703.2, Doors, to read as follows: "F-1703.2 Doors: All doors in buildings of use Group A and E or portions of buildings used for assembly shall comply with the requirements set forth in subsection F-401.6 and subsection F-602.0. Panic release devices shall not be required in Use Groups A-3 and A-4 if the principal entrance/exit doors are free-swinging and swing in the direction of exit travel."

Section 17. [~~13.~~] Article 18 is adopted in its entirety and a new subsection shall be created to read as follows: "F-1800.3 Operation and maintenance: All devices and systems required by Section 603 of the Kentucky Building Code listed in Appendix A shall be maintained in an operable condition." [~~s 18 through 26 are adopted in their entirety unchanged.~~]

Section 19. Articles 19 through 26 are adopted in their entirety.

Section 20. [~~14.~~] Article 27. (1) Amend Subsection F-2700.1 to read: ""F-2700.1 Scope: See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 21 [~~15.~~] Article 28. (1) Amend Subsection F-2800.3 and create paragraphs F-2800.3.1 through F-2800.3.2 to read as follows:

(a) "F-2800.3 Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(b) "F-2800.3.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

5. Permits shall not be required for the storage and handling of crude oil on oil and gas leases."

6. Nothing in this Article shall require compliance by those oil and gas facilities regulated pursuant to KRS Chapter 353.

(c) "F-2800.3.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of the Kentucky Building Code."

(2) Create a new subsection, F-2800.4.2 Inspection, to read as follows: "F-2800.4.2 Inspection: Prior to covering or concealing any work, the State Fire Marshal's Office shall be notified when the installation is ready for inspection. The State Fire Marshal may require covered or concealed work to be exposed, if necessary, to determine code compliance."

(3) Create a new subsection, F-2804.3.3, to read as follows: "F-2804.3.3 Intercommunication System: In self-service stations, an effective two (2) way intercommunication system between the control stand and each pump island shall be installed."

(4) Create a new subsection, F-2805.5, to read as follows: "F-2805.5 Prohibited Uses: Flammable and combustible liquid storage tanks designed for underground use shall not be installed aboveground unless the manufacturer also specifies that the tank is suitable for aboveground use."

(5) Create a new subsection, F-2806.5.1, to read as follows: "F-2806.5.1 Electrical Conduit: Electrical conduit shall be separated from underground storage tanks or piping systems by at least six (6) inches (152 mm)."

(6) Create a new subsection, F-2806.9.1, to read as follows: "F-2806.9.1 New Underground Installations: During backfill and paving operations, the contractor shall monitor new underground installations

for leaks by means of pressure, water or vacuum testing as appropriate to the type of system."

(7) Create subsection F-2806.10.2.1 to read as follows: "F-2806.10.2.1 Overfill method: The underground storage tank shall be filled to its maximum capacity in conducting precision tests for the following:

1. Alterations or the breaking of any connections located at the top of the tank; and

2. To determine the location of a suspected leak as determined by the code official."

(8) Create a new subsection, F-2806.10.3, to read as follows: "F-2806.10.3 Failed Tests: An underground storage tank or piping system which fails a test required by F-2806.10.2.1 shall be promptly reported to the State Fire Marshal's Office."

(9) Create a new subsection, F-2806.10.4, to read as follows: "F-2806.10.4 Pump Leak Protection: In new construction, new systems and upgrades, a positive shut-off valve shall be installed between the piping system and the leak detector on the discharge side of the pump."

Section 22. [~~16.~~] Article 29 is adopted in its entirety with the following subsection amended to read as follows: "F-2901.2 Identification: All containers shall be labeled or placarded in accordance with DOT 49 CFR listed in Appendix A." [~~unchanged.~~]

Section 23. [~~17.~~] Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.3 [~~2~~] to read as follows:

(a) "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(b) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(c) "F-3000.2.2 The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

(d) "F-3000.2.3 Any permanent (Stationary) tank installation utilizing storage containers of over 2,000 gallons (7.6 m^3) individual water capacity or with aggregate water capacity exceeding 4,000 gallons (15.1 m^3)."

(2) Amend subsection F-3001.1 to read as follows: "F-3001.1 Above ground: All above-ground tank container systems shall be located with respect to the nearest important building, group of buildings or line of adjoining property as specified in Table F-3001.1."

Section 24. [~~18.~~] Articles 31 through 34 [~~and Appendix A~~] are adopted in their entirety unchanged [~~, except Appendix A is amended by adding the following references: "NFiPA 231, 1990; NFiPA 231C, 1986; NFiPA 231D, 1989; NFiPA 231F, 1987; and the Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky administrative regulations"~~].

Section 25. Appendix A is adopted in its entirety, with the following amendments:

(1) Add the following NFiPA Pamphlet Editions:

"13R-91 Sprinkler Systems in Residential Occupancies Up to Four (4) Stories in Height
45-91 Fire Protection for Laboratories Using Chemicals
72-90 Installation, Maintenance and use of Protective Signaling Systems
231-90 General Storage
231C-86 Rack Storage of Materials
231D-89 Storage of Rubber Tires
231F-87 Storage of Rolled Paper
1123-90 Outdoor Display of Fireworks
1124-88 Manufacturer, Transportation and Storage of Fireworks"

(2) Add the following reference: "The Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky Administrative Regulations."

(3) Amend the Edition dates for the following ASTM references: "D86-90"; "D93-90"; "D323-90"; and "E84-91".

(4) Amend the Edition date for the following API reference: "12B-90".

(5) Amend the Edition date for the following ASME reference: "A17.1-90".

(6) Amend the Edition date for the following STI reference: "STIstiP3-90".

(7) Amend the Edition date for the following UL reference: "443-90".

(8) Amend the Edition date to "1990" for the following NFiPA references: "10; 12B; 14; 15; 17; 17A; 20; 30; 30A; 32; 46; 50; 59A; 72E; 80; 91; 99; 303; 385; 407; 495 and 704."

(9) Amend the Edition date to "1991" for the following NFiPA reference; "13; 16; 88B; and 801".

(10) Amend the Edition date to "1992" for the following NFiPA reference: "#58; and #70".

(11) Delete the following NFiPA references: "72A; 72B; 72C; 72D; and 72F".

Section 26. 815 KAR 10:020 is hereby repealed.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: Existing commercial, public buildings and multifamily dwellings.

(a) Direct and indirect costs or savings to those affected: Amendment may result in costs of making fire safety alterations to buildings only if a hazard exists in the facility.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any

effects upon competition):

(b) Reporting and paperwork requirements: Regular inspection reports as have been carried on for many years.

(2) Effects on the promulgating administrative body: Receiving inspection reports, scheduling hearings, etc.; procedures do not change with amendment. Code books will be amended and sent to purchasers.

(a) Direct and indirect costs or savings: Book amendment and mailing to purchasers which is provided by office staff.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change in paperwork requirements through the citations for violations, computer adjustments, etc.

(3) Assessment of anticipated effect on state and local revenues: None anticipated beyond permits, if they so choose.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with fire codes referenced in appendix. More efficient because it was designed to interact with requirements of the Kentucky Building Code.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.

(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the Kentucky Standards of Safety and the KBC are harmonized to avoid conflict. It allows the building official to refer to the standards if necessary and lets fire officials enforce code where it was never approved when built. SFM enforcement powers include the ability to help enforce all laws relating to fire safety.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered by allowing alternatives to meet the intent of the code and to allow different treatment of existing buildings based upon whether or not they have had prior approval or met other building codes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the Standards of Safety, pursuant to KRS 227.320.

3. State the aspect or service of local government to which this administrative regulation relates. Fire safety inspections, reporting and enforcement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Merely provides appropriate standards for use statewide by each local government.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:071. Storage and installation of schedule 40, ABS and PVC plastic pipe and fittings.

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 method needed for storage, handling and installation of schedule 40, ABS and PVC plastic pipe and fittings. This administrative regulation is being amended because new fittings are now available which allows for expansion when connecting plastic pipe to metal as well as a new means of connecting different kinds of plastic pipe. [~~This amendment to Section 7 of this regulation is necessary to allow for the greater rate of expansion of plastic pipe when plastic pipe is added to a metallic piping system.~~]

Section 1. Storage. (1) Pipe. Pipe shall remain in lifts until ready for use. Lifts shall not be stacked more than three (3) high and shall always be stacked wood-on-wood. Loose pipe shall be stored in racks with a minimum support space of three (3) feet. Pipe shall be shaded but not directly covered when stored outside in high ambient temperatures to [~~. This will~~] provide for free circulation of air and reduce the heat buildup due to direct sunlight exposure.

(2) Fittings. Fittings shall be stored in their original cartons to be kept free of dirt and to reduce the possibility of damage. If [~~When~~] possible, [~~all~~] fittings shall be stored indoors.

(3) Solvent cement and primers. Solvent cement and primers[~~, because of flammability,~~] shall [~~be stored in an area where they will~~] not be exposed to ignition, sparks, open flames or heat during storage and [~~. They~~] shall not be used beyond their marked shelf life.

Section 2. Handling. Care shall be exercised to avoid rough handling of pipe and fittings. They shall not be dragged over sharp projections, dropped or have heavy objects dropped on them. Pipe ends shall be inspected for cracks in the event of abuse prior to installation. (If [~~When~~] transported by truck or trailer, piping shall be reasonably supported.)

Section 3. Installation. (1) Underneath concrete floors. [~~All~~] Pipe and fittings shall be laid on stable earth conditions and have four (4) inches of grillage on its bottom, top and sides. If ground is unstable, it shall be removed and the excavation filled with grillage to the underneath side of the piping. [~~No part of a~~] Soil or waste pipe shall not be placed in a concrete slab except those pipes that pass vertically through it.

(2) Above concrete floors. [~~All~~] Horizontal piping shall be properly aligned and installed without strain. Piping shall not be bent or pulled in position either before or after solvent welds have been made. It shall be supported at intervals not to exceed four (4) feet and at the end of the branches and at the change of direction and shall be so installed as to permit freedom of movement. [~~All~~] Vertical piping shall be supported at their bases and all upward movement shall not be restricted. Closet flanges shall be securely fastened to the floor through which it passes.

Section 4. Hangers. Hangers and straps shall be at least one (1) inch wide and shall not compress, distort, cut or abrade the piping to [~~. They shall~~] allow free movement at all times.

Section 5. Making Solvent Cement Joints. (1)(a) Cement shall not be thinned. [~~All~~] Cement that has thickened shall be discarded. [~~No~~]

Cement shall not be used beyond its shelf life and [~~.~~ ~~It~~] shall not be subject to temperatures below thirty (30) degrees Fahrenheit.

(b) Installers shall avoid prolonged breathing of vapors. Prolonged contact with skin is harmful. Install only with adequate ventilation. Avoid contact with eyes and skin. Solvents are also flammable.

(2) Socket fit. ABS and PVC fittings are manufactured to a close tolerance. [~~All~~] Joints shall be an interference fit between pipe and fittings. Additional cement shall not be permitted for the correction of loosely fitted joints.

(3) Joining techniques. Piping shall be cut square with a saw or pipe cutter designed especially for plastic pipe. Pipe and fittings shall be protected from serrated holding devices or abrasions.

(a) Burrs shall be removed from both inside and outside of the pipe. Dust, dirt and moisture shall be removed from the surfaces that shall [~~are to~~] be cemented.

(b) Solvent chemical cleaner recommended by the company whose product is being installed shall be applied inside the fitting and on the outside of the piping shall [~~that is to~~] be joined.

(c) A paint brush shall be used to apply the solvent cement in [~~. Apply~~] a moderate, even coating [~~of cement~~] in the fitting socket as well as covering the pipe on the joining surfaces [~~only~~].

(d) Joints shall be assembled as quickly as possible before the cement dries. Insert the piping into the fitting socket turning the pipe slightly to ensure even distribution to the cement. Hold the piping in a firm position so it does not "back out" of the joint.

(e) Remove excess solvent cement from the exterior of the joint with a clean dry cloth. The joint shall not be handled for a two (2) minute period. A fifteen (15) minute period shall be allowed for the joint to develop hanging strength.

(f) A [~~No~~] Cemented pipe joint shall not be made in conditions of excessive moisture, humidity or when the temperature is below forty (40) degrees or above ninety (90) degrees Fahrenheit.

Section 6. Commingling of Plastic Pipe. Plastic pipe shall not be commingled except through the use of male and female adapters or other transition fittings approved by administrative regulation of the department.

Section 7. Mixing of Plastic and Metal Piping. Plastic and metal piping shall discharge into one another by the use of proper fittings and adapters. [~~If a waste opening or openings using plastic pipe are added to an existing system of metallic piping, the main vent of the added waste opening shall extend through the roof separately to allow for expansion.~~]

Section 8. Thermal Expansion. Each plumbing installation shall be engineered and designed giving due consideration to the expansion characteristics of the material. [~~Below are~~] Expansion tables for both PVC and ABS schedule 40 plastic piping are as follows:

PVC-DWV TYPE 1
THERMAL EXPANSION TABLE

Chart Shows Length Change in Inches
vs. Degrees Temperature Change

LG. FT.	40oF	50oF	60oF	70oF	80oF	90oF	100oF
20	278	.348	.418	.487	.557	.626	.696
40	.557	.696	.835	.974	1.114	1.235	1.392
60	.835	1.044	1.253	1.462	1.670	1.879	2.088
80	1.134	1.392	1.670	1.949	2.227	2.506	2.784
100	1.392	1.740	2.088	2.436	2.784	3.132	3.480

ABS-DWV TYPE 1
THERMAL EXPANSION TABLE

Chart Shows Length Change in Inches
vs. Degrees Temperature Change

LG. FT.	40oF	50oF	60oF	70oF	80oF	90oF	100oF
20	0.536	0.670	0.80	0.938	1.072	1.206	1.340
40	1.070	1.340	1.610	1.880	2.050	2.420	2.690
60	1.609	2.010	2.410	2.820	3.220	3.620	4.020
80	2.143	2.680	3.220	3.760	4.290	4.830	5.360
100	2.680	3.350	4.020	4.700	5.360	6.030	6.700

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 25, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to administrative regulations.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenue will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by both groups.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All installations of similar material for similar purposes have similar requirements.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:090. Soil, waste and vent 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 identifies and publishes the manufacturer's ~~[standard]~~ specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems. This amendment is necessary to delete obsolete manufacturing specifications and replace with current specifications in Section 6 of this administrative regulation, and to clarify that up to three (3) water closets can discharge into any three (3) inch line (not just vertical stacks) in Section 7 of this administrative regulation. ~~[This amendment (Section 26) allows an alternative for venting floor drains and open receptacles in commercial kitchens if the waste line discharges into a four (4") inch master trap before entering the sanitary sewer system. This amendment was approved by the Plumbing Code Committee on November 6, 1991 and the Board of Housing on January 23, 1992.]~~

Section 1. Grades and Supports of Horizontal Piping. Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length. Stacks shall be supported at their bases and all pipes shall be rigidly secured. No-hub pipe and fittings shall be supported at each joint of pipe and fittings. Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible. Polyethylene pipe and fittings must be continuously supported with a V channel. Stacks shall be rigidly supported at their bases and at the floor level.

Section 2. Change in Direction. Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bends, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

Section 3. Prohibited Fittings. Double hub bends and double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands shall be prohibited. Double sanitary tees may be used on vertical soil, waste and vent lines. Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, dead ends shall be avoided.

Section 5. Protection of Material. Pipes passing under or through walls shall be protected from breakage. Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312 ~~[CS-268-68]~~, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90 ~~[76]~~, D-1788-73 or F-628, silicon iron or borosilicate. All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		96
5		180
6		420
8		1200
10		2400
12		4200

Water closets shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line ~~[stack]~~.

Section 8. Soil, and Vent Stacks. Building in which plumbing fixtures are installed shall have a soil or waste and vent stack, or stacks extending full size through the roof. Soil or waste and vent stacks shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that no more than three (3) water closets shall discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with all other sections of this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch

stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain shall be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. Soil and waste stacks and branches shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be either cast iron, lead, brass, copper, or plastic closet bends. Three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. Fixture connections shall not be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. Roof extensions of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. Stacks of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste line of the main waste, soil, or vent pipes shall be washed. Fixture traps shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. If it becomes necessary to increase a vertical vent stack, it becomes a main vent and shall comply with other sections of this administrative regulation.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for residential installations, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. Vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main,

waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall not require individual vents when placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. Open receptacles may be connected to floor drain lines without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with other sections of this administrative regulation. The connections shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. Corrosive liquids shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. Laboratory waste piping shall be sized in accordance with the other sections of this administrative regulation. All fixtures shall be individually trapped. A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover. If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented. If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof. Fixture branches exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented. The distance shall be measured from the center of the main to the center of the vertical riser. Fixture connections shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink. Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation. EXEMPTION: Basement floor drains, in single family

dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 25, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to administrative regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenue will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Different requirements depending upon pipe size, length of run and types of material.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.010, 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 quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering buildings and homes that are served by plumbing systems. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to delete language in Section 13 that is no longer enforced by the division and make amendments to comply with KRS Chapter 13A drafting rules. [~~Amendment of Section 8 of this regulation will allow the use of a Y or T clean out to be used which has been acceptable plumbing practice for years with a second clean out either inside or outside the building. Language in Section 15 of this regulation is archaic and was amended to allow a two (2) inch floor drain in residential occupancies, particularly in second story apartments.~~]

Section 1. Traps, Kind and Minimum Size. Every trap shall be self-cleaning. Traps for bathtubs, lavatories, sinks and other similar fixtures shall either be tubular brass, tubular ABS or PVC produced and labeled as [~~conforming to~~] ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene- styrene) traps. Tubular or schedule 40 PVC or ABS p-traps may be either the union-joint or solvent welded type. Tubular brass traps shall be seventeen (17) gauge. [~~No~~] Tubular brass, tubular PVC or tubular ABS traps shall not be installed below the finished floor serving a fixture. Traps shall have a full-bore, smooth interior waterway. The threads in cast brass and cast iron traps shall be tapped out of solid metal. Lead traps shall be extra heavy. Copies of this specification may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Traps, Prohibited. A trap which depends upon the action of movable parts or concealed interior partitions for its seal shall not be used.

Section 3. Traps, Where Required. A [~~Each~~] fixture shall be separately trapped by a water-seal trap placed as near [~~to the fixture~~] as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal. [~~In no case shall the~~] Waste from a bathtub or other fixture shall not discharge into a water closet bend. A [~~No~~] fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal [~~of~~] not less than two (2) inches or [~~nor~~] more than four (4) inches.

Section 5. Trap Clean-outs. Trap clean-outs shall be [~~are~~] optional.

Section 6. Trap Levels and Protection. [~~All~~] Traps shall be set true with respect to their water seals and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. The bodies of clean-out ferrules shall be made in standard pipe sizes, conforming in thickness to that of the pipe and fittings and shall not extend [~~not~~] less than one-quarter (1/4) inch above the hub in which it is placed. The clean-out cap or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, where Required. A clean-out shall be easily accessible and [~~,~~] shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full size branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and shall not be less than four (4) inches for larger pipe.

Section 9. Manholes. [~~All~~] Underground clean-outs in a building, except where clean-outs are flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A [~~Any~~] floor or wall connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. If [~~When~~] a grease trap is installed, it shall be placed as near [~~as possible~~] to the fixture it serves as practical and shall be approved by the department. [~~All~~] Grease traps used inside a building shall have a sealed cover and shall be properly vented. Grease traps shall be installed for [~~all~~] restaurants and food service establishments and other business establishments [~~as well as other types of businesses~~] deemed necessary by the Department of Housing, Buildings and Construction or as required by municipal ordinance. If [~~In the case of~~] food establishments use [~~using~~] a private sewage system, grease traps shall be installed as required by [~~in~~] the Cabinet for Human resources administrative regulation 902 KAR 10:085.

Section 12. Sand Traps. Sand traps shall be [~~designed and located so as to be~~] readily accessible and shall meet the requirements of the Department of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. A basement floor drain shall connect to [~~into~~] a trap and [~~so constructed that it can be~~] readily accessible for cleaning [~~cleaned~~] and shall be of sufficient [~~of a~~] size to serve [~~efficiently~~] the purpose [~~for which it is~~] intended. If drains are [~~When~~] subject to back flow or back pressure, the [~~such~~] drains shall be equipped with an adequate backwater valve. [~~The trap seal shall be at least four (4) inches above the flow line of the house drain.~~]

Section 14. Back Water Valves. A back water valve shall be of noncorrosive metals and shall be [~~so~~] constructed [~~as~~] to insure a positive mechanical seal except when discharging wastes.

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. Kitchen sink units, or fixtures with more than one (1) unit may be connected with a continuous-waste, if [~~provided~~] a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 25, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to administrative regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenue will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by both groups.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering not appropriate - only amendments to comply with KRS Chapter 13A.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 25:010. Manufactured [~~Mobile~~] homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, 42 USC 5401

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY AND FUNCTION: KRS 227.570 and 227.590 requires the Mobile Home Certification and Licensure Board to establish and the State Fire Marshal's Office to enforce rules and regulations governing the standards for manufacture, sale, installation and alteration of manufactured housing [~~mobile homes~~]; and the office of the State Fire Marshal to license manufactured [~~mobile~~] home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. This administrative regulation is [~~These regulations are~~] consistent with Title 6 of the Federal Housing and Community Development Act of 1974 and is [~~are~~] intended to assure safety for owners and occupiers of new and used manufactured [~~mobile~~] homes sold by dealers. This amendment is necessary to specify tie-down requirements given to the authority having jurisdiction under referenced standards. [~~This amendment is necessary to clarify that all mechanical systems in mobile homes are to be inspected when dealers sell used mobile homes, to create a definition of installation, to tier the licensing of dealers whose only activity is brokering mobile homes owned by others located on private property and to make it unlawful for a dealer to sell a mobile home if he cannot provide its title.~~]

Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number 501(b) and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel burning systems or electrical systems or smoke detectors or their function unless excluded by this administrative regulation.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell manufactured housing [~~mobile homes~~] within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used manufactured [~~mobile~~] homes before registration or title in Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new manufactured [~~mobile~~] homes not covered by the HUD Act.

(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used manufactured [~~mobile~~] homes.

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(15) "Manufacturer" as defined by KRS 227.550(8).

(16) "Manufactured housing" as defined by KRS 227.550(7).

(17) "[~~Mobile home or~~] Manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.

(18) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(19) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured [~~mobile~~] home. It also means negotiating the purchase and sale or exchange of manufactured [~~mobile~~] homes for a fee, commission, compensation, or other valuable consideration.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Red tag" means a written notice which is applied to a manufactured [~~mobile~~] home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this administrative regulation signifying that the manufactured [~~mobile~~] home is not in compliance with applicable laws.

(22) "Registration" means the transfer of title or any other official recording of change of ownership.

(23) "Salvage unit" means any used manufactured [~~mobile~~] home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

(25) "Used manufactured [~~mobile~~] home" means any manufactured [~~mobile~~] home unit which shall be [~~is~~] offered for sale after the original purchase. Used manufactured homes [~~These units~~] are not covered by the HUD Act.

Section 2. Authorization and Enforcement. (1) This administrative regulation is authorized by KRS 227.590 and established pursuant to the procedures set forth in KRS Chapter 13A, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to manufactured [~~mobile~~] homes. Title VI of the Federal Housing and Community Development Act of 1974 (HUD Act), shall govern all new manufactured [~~mobile~~] homes.

(2) Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any dealer's place of business in order to inspect any manufactured [~~mobile~~] home for which the office has issued a seal of approval, or to inspect the manufactured [~~mobile~~] home's equipment and its installations to insure compliance with the Act, the code and the HUD Act and this administrative regulation [~~these regulations~~]. Upon complaint and request by the owner or occupant, a privately owned manufactured [~~mobile~~] home requiring a seal may be entered to deter-

mine compliance with this administrative regulation [~~these regulations~~]. When it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured [~~mobile~~] homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Scope and Purpose of the Act and Regulations. Except to the extent otherwise stated in the Act, this administrative regulation shall govern the design, manufacture, installation and sale of new and used manufactured [~~mobile~~] homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers. Any person, firm or corporation who sells or offers for sale in Kentucky three (3) or more manufactured [~~mobile~~] homes in any consecutive twelve (12) month period shall be considered a dealer subject to all requirements set forth in this administrative regulation and KRS 227.550 to 227.660. This administrative regulation shall [~~These regulations~~] apply to manufactured [~~mobile~~] homes constructed [~~manufactured~~] in [~~manufacturing~~] facilities located within or outside the Commonwealth. Manufactured housing [~~Mobile homes~~] brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in manufactured housing [~~mobile homes~~] not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of manufactured housing [~~mobile homes~~].

(3) All new manufactured [~~mobile~~] homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is incorporated by reference in subsection (3) of this section shall be the standard for all used manufactured [~~mobile~~] homes, unless otherwise provided in this administrative regulation, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) All manufactured [~~mobile~~] homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and a new seal affixed to the unit or a new seal may be affixed over the existing seal or label. If [~~When~~] a new manufactured [~~mobile~~] home purchased under the provision of the HUD Act is resold, it shall become [~~becomes~~] a used manufactured [~~mobile~~] home and shall be subject to the provisions of this section. Class "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit. A [~~No~~] salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All manufactured housing [~~mobile homes~~] shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday. The installation shall include that the unit or units shall be tied down and anchored at least at each of the four (4) corners of the home.

(7) All new manufactured [~~mobile~~] homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used manufactured [~~mobile~~] homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection shall not apply to manufactured [~~mobile~~] homes built prior to the HUD Act.

(8) A [~~Any~~] licensed Kentucky manufactured [~~mobile~~] home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of manufactured [~~mobile~~] homes shall be permitted to inspect and certify those manufactured [~~mobile~~] homes purchased in another state for use within the Commonwealth of Kentucky. A [~~Any~~] dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified manufactured housing [~~mobile home~~] dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this administrative regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of manufactured [~~mobile~~] homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. [~~Any~~] Questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regula-

tion adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A [~~No~~] manufacturer shall not manufacture, import, or sell any manufactured housing [~~mobile home~~] in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Manufactured housing [~~Mobile homes~~] not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A $500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 bodily injury or death for each person, $400,000 bodily injury or death for each accident, and $100,000 property damage.

(3) Quality control measures shall be provided for all manufactured housing [~~mobile units~~] not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which will direct the manufacturer to construct manufactured housing [~~mobile homes~~] in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this administrative regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 13 of this administrative regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not comply with this administrative regulation [~~conform with these regulations~~], the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for manufactured housing [~~mobile home~~] units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the manufactured [~~mobile~~] homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured [~~mobile~~] home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing [~~mobile homes~~] shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and this administrative regulation [~~regulations~~];

(e) Names of offices, if dealership in corporate form;

(f) Names of partners, if dealership in partnership form;

(g) A copy of a valid Kentucky sales tax certificate;

(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $200. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.

(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of

location to another municipality shall require a new license.

(6) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage.

(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.

(8) A dealer shall not have the authority to make any alterations to any manufactured [~~mobile~~] home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used manufactured [~~mobile~~] homes, permission may be obtained from the State Fire Marshal's Office in accordance with this administrative regulation. Any dealer altering a manufactured [~~mobile~~] home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a manufactured [~~mobile~~] home shall include but is not limited to: addition or deletion of windows, doors, or partitions; conversion of a heating, cooling, fuel burning systems from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heating, cooling, or fuel burning appliance, etc. The following shall not constitute an alteration or conversion: replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.

(9) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed (move to a different county requires a new license);

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

(d) There are changes in the principal officers of the firm.

(10) Out-of-state dealers with valid Kentucky licenses. Exception: an [~~any~~] applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.

(11) If a [~~any~~] person who sells manufactured [~~mobile~~] homes does not take possession or ownership of the manufactured [~~mobile~~] homes and offers for sale used manufactured [~~mobile~~] homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this administrative regulation with the following conditions:

(a) His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and

(b) The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be affixed to the unit prior to offering it for sale.

Section 9. Temporary License. (1) A [~~No~~] person, other than one duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured housing [~~mobile homes~~] within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be $100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing [~~mobile homes~~] for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license shall be [~~is~~] granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of $200,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $100,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used manufactured housing units [~~mobile homes~~] shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;

(d) Possess a valid Kentucky Sales Tax Certificate;

(e) Provide all other information required by the office;

(f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a manufactured [~~mobile~~] home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured [~~mobile~~] homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured [~~mobile~~] homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units [~~mobile homes~~] not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured [~~mobile~~] home except as permitted between licensed dealers, pursuant to Section 4(5) of this administrative regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label, except as otherwise provided in this administrative regulation. A [~~Any~~] dealer who has acquired a used manufactured [~~mobile~~] home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new manufactured [~~mobile~~] home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.

2. Any dealer, except one altering a manufactured [~~mobile~~] home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. A [~~Any~~] person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each Class "A" seal or twenty-five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a manufactured [~~mobile~~] home not covered by the HUD Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those manufactured [~~mobile~~] homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. A [~~Any~~] dealer proposing an alteration to a manufactured [~~mobile~~] home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

a. Make and model of manufactured [~~mobile~~] home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications, if [~~when~~] required.

e. Location of the manufactured [~~mobile~~] home where work is to be performed.

f. Name and address of the owner of the manufactured [~~mobile~~] home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing manufactured housing [~~mobile homes~~] not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used manufactured [~~mobile~~] home under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture, sell or offer for sale manufactured [~~mobile~~] homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a manufactured [~~mobile~~] home not covered by the HUD Act is found to be in violation of these rules, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this administrative regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific manufactured [~~mobile~~] home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. [~~No~~] Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the manufactured [~~mobile~~] home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a manufactured [~~mobile~~] home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by administrative regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. A [~~No~~] dealer shall not sell or offer for sale any manufactured [~~mobile~~] home upon which he cannot present a marketable title to the purchaser.

Section 13. Manufactured [~~Mobile~~] Home Unit Certification Format.

MANUFACTURED [~~MOBILE~~] HOME
UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____
Mailing Address County

_____
City State Zip Code

I hereby certify that the manufactured [~~mobile~~] homes as described hereon have been constructed in compliance with NFPA 501 B.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

Section 14. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

_____
Name of Dealer

_____
Mailing Address County

_____
City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and administrative regulations thereto and that the new manufactured [~~mobile~~] homes described hereon have the appropriate HUD label.

No.	Serial #	HUD LABEL #/ KY Seal #	Date Mfg.	Make	Purchaser & Address

This form shall be used in reporting units to the field inspector.

_____ BY _____
Date Person Authorized to Certify These Units

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 24, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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: Persons purchasing manufactured homes in Kentucky. Approximately 10,000 new homes sold annually in state.
(a) Direct and indirect costs or savings to those affected: Dealer installation would include cost of anchoring manufactured homes. Savings would be to consumer in safeguarding homes from wind damage.
1. First year: Anchoring homes could cost dealer $100 each.
2. Continuing costs or savings: Continued savings would be to consumer in safeguarding homes from wind damage thereby decreasing cost of insurance or repair.
3. Additional factors increasing or decreasing costs (note any effects upon competition): This is a minimum requirement for anchoring. The consumer, dealer or insurance company may require more than 4 anchors per home.
(b) Reporting and paperwork requirements: None required by this amendment.
(2) Effects on the promulgating administrative body: None by this amendment. This amendment was approved by the Mobile Home Certification and Licensure Board to assure safety for owners and occupiers of manufactured homes.
(a) Direct and indirect costs or savings: There are no additional costs to this agency incurred by this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenue created by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None rejected.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not aware of any conflicting, overlapping or duplicating law.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. No tiering in amendment because all installations need the minimum tie-down requirements. The regulation is tiered in that new and used mobile homes have different scheme applied.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, Acts 1992 c. 332
STATUTORY AUTHORITY: KRS 216B.042, 216B.105, Acts 1992 c. 332
NECESSITY AND FUNCTION: KRS 216B.042, [~~and~~] 216B.105 and Acts 1992 c. 332 mandate [~~mandates~~] that the Kentucky Cabinet for Human Resources regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.
(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.
(3) "Freestanding" means a completely detached and separate building, street access, telephone service, dining, and street address.
(4) "Full-time equivalent (FTE)" for this regulation means one (1)

employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

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

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

~~[(7) "Home like" means providing opportunities for adult child communication, shared tasks, parent child learning, congregate meals, and living group activities where day to day routines for all residents are planned, predictable and appropriate to the ages and levels of functioning of the residents.]~~

(7) [~~(8)~~] "Licensure agency" means the Division of [~~for~~] Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(8) [~~(9)~~] "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(9) [~~(10)~~] "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning; a social worker with master's degree; a nurse with bachelor's degree and two (2) years' experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential setting for children; and other professionals from disciplines related to the treatment of mental illness, such as occupational, or expressive[~~, or recreational~~] therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.

(10) [~~(11)~~] "Psychiatric residential treatment facility (PRTF)" means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) [~~sixteen (16)~~] beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

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

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

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

(14) [~~(15)~~] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

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

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

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

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

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

(3) PRTF's that are located on the same grounds in accordance with Section 1(10) of this regulation may share joint activities and staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Hiring and direction of personnel;

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

(d) Approving purchases and payroll;

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

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

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

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

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

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

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

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

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

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

13. The discharge and aftercare planning processes;

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

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

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

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

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

a. Emergency services and crisis stabilization;

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

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

(2) Professional staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The clinical privileges of professional staff;

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

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

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

(3) Direct-care staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Support staff.

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

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

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

(6) Volunteers.

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

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

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

(d) Volunteers shall not [~~cannot~~] be used in place of required staff.

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

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

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program [~~executive~~] director or designee(s). Responsibility for any part of the staff development

program may be delegated to appropriately qualified individuals.

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

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

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

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

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

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

(9) Employment practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

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

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

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

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

(c) Telephone communications with the resident's family or

significant others at a reasonable frequency.

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

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

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

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

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

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

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

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

(b) The work is performed voluntarily;

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

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

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

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

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

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

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

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

(h) Denial of access to educational services;

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

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

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

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

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

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

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

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

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

(a) Basic identifying information;

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

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

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

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

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

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

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

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

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

(i) Physical health assessment, including but not limited to evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the facility;

(c) Identify the aspects of care that the facility provides;

(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

(h) Take actions to correct identified problems or to improve care;

(i) Assess the effectiveness of the actions and document the improvement in care; and

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability or a severe emotional disability in accordance with HB 554 of the 1992 General Assembly (this does not preclude the facility from admitting a child with multiple diagnoses) [~~and adolescents~~] who meet its written admission criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

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

Section 11. Resident Management. (1) Intake.

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

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

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

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

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

(b) The intake process shall include an initial assessment of the resident performed [~~done~~] by the professional staff. [;] The results of the assessment shall be [~~which are~~] explained to the parent or [,] guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude [~~and which result in a conclusion~~] that:

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

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

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

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

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

3. Proposed discharge plan and anticipated length of stay.

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

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

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

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

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

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

(2) Assessment.

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

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

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

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

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

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

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

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

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

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

3. A direct psychiatric evaluation;

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

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

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

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

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

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

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

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

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

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

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

1. Vocational history;

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

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

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

1. A legal history; and

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

(3) Treatment plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Progress notes.

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

1. Documentation of implementation of the treatment plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

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

6. Special clinical management requirements including psychotropic drugs;

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

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

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

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

(1) Mental health services.

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

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

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

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

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

(2) Physical health services.

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

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

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

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

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

5. Health and sex education;

6. An ongoing immunization program; and

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

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

1. Referral of residents;

2. Qualifications of staff providing services;
3. Exchange of clinical information; and
4. Financial arrangements.

(3) Dietary services.

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

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

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

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

1. Shall account for the special food needs and tastes of residents;
2. Shall not be withheld as punishment; and
3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

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

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

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

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

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

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

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

1. Notification of designated member of the facility's chain of command;
2. Designation of staff person who will decide to refer resident to outside treatment resources;
3. Notification of resident's parent, guardian, or custodian;
4. Transportation to be used;
5. Staff member to accompany resident;
6. Necessary consent and referral forms to accompany resident; and
7. Name, location, and telephone of designated treatment resources.

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

1. Licensed physician and an alternate designee;
2. Licensed dentist and an alternate designee;
3. Licensed hospital; and
4. Licensed hospital with an accredited psychiatric unit.

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

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

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

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

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

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

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

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

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

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

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

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include, but are not limited to, the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to handicapped students. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to handicapped students. Educational services provided by a local school district may be provided within the facility or within the local school district. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents. In any case, education services approved by the Department of Education shall [~~must~~] be available either on the same site or in close physical proximity to the residential treatment facility.

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

shall, at a minimum, address:

1. Qualifications of staff providing services;

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

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

4. Financial and service arrangements.

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

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

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

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

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

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (IEP) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program [~~executive~~] director or designee shall request an invitation to attend all IEP meetings. If allowed, the program [~~executive~~] director or designee shall attend all IEP meetings.

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

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

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

(7) Activity services.

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

1. The schedule shall be in one-half (1/2) hour increments for normal waking hours that residents are not in school.

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

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

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

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

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

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

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

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

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

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

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

(2) Special treatment procedures [~~at no time~~] shall not be used as punishment or as a convenience of staff.

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

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

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

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

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

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

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

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

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

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

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

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

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under

so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

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

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

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

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

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

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

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

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

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

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

(c) Evaluating the effectiveness of cleaning; and

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

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

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

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

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

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

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

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

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

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

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: September 22, 1992

FILED WITH LRC: October 7, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 24, 1992, at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 19, 1992, of their desire to appear and testify at the hearing: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander, Ralph Von Derau

(1) Type and number of entities affected: A maximum of 16 beds per area development district except for ADD 7 (maximum 32 beds), and ADDs 6 and 15 (maximum 48 beds).

(a) Direct and indirect costs or savings to those affected: The statute limits the size of these facilities to a maximum of 8 beds. As currently written, an allowance is made in the percentage of full-time professional staff for a facility of less than 16 beds. While this provision of the regulation may decrease costs, providers indicate that some costs may escalate due to economies of scale. This program's history in Kentucky is insufficient to allow an exact estimate of any increase or decrease in costs associated with these amendments.

1. First year: Unknown

2. Continuing costs or savings: Unknown

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

(b) Reporting and paperwork requirements: No additional requirements are imposed.

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements are imposed.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with the provisions of HB 554 of the 1992 General Assembly.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Some effort was made to allow for some staffing variances for smaller facilities.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:330. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, Acts 1992 c. 332

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

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

Section 1. Definitions. (1) "Psychiatric residential treatment facility (PRTF)" means freestanding facility with a maximum of eight (8) [~~sixteen (16)~~] beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

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

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

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

(5) "Living unit" means the area that is supplied by the facility for daily living and therapeutic interaction of the residents. There shall be a maximum of eight (8) [~~ten (10)~~] residents per living unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Facility Requirements and Special Conditions. (1) Facilities shall be available to the public, staff, and residents who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, and shall comply with the provisions of the Americans With Disabilities Act [~~etc~~].

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

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

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

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

(1) Bedrooms.

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

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

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

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

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

(2) Bathrooms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) [~~(d)~~] Clean linen storage. It must be in an enclosed room.

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Seclusion Room. A seclusion room may be provided.

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

Section 11. [~~10.~~] Storage and Service Areas. The following shall be included:

(1) Sufficient storage space shall be provided.

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

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

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

Section 12. [~~11.~~] Details and Finishes. A high degree of safety for the occupants in minimizing the incidence of accidents shall be provided. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

(1) Details.

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

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

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

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

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

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

(g) Ceiling heights shall not be less than seven (7) feet and six (6) inches.

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

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

(2) Finishes.

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

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

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

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

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

Section 13. [~~12.~~] Construction. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 14. [~~13.~~] Mechanical Requirements. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.

(2) Temperature.

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

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

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

(4) Water supply systems.

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

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

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

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

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

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

(5) Hot water heaters and tanks.

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

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

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

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

Section 15. [~~14.~~] Electrical Requirements. (1) General. Electrical requirements of the Kentucky Building Code shall apply where applicable.

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

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

(4) Lighting.

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

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

(5) Receptacles (convenience outlets).

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

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

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: September 22, 1992

FILED WITH LRC: October 7, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 24, 1992, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 19, 1992: Masten Childers II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person:Eric Friedlander/Ralph Von Derau

(1) Type and number of entities affected: A maximum of 16 beds per Area Development District except for ADD 7 (maximum 32 beds), and ADD's 6 and 15 (maximum 48 beds).

(a) Direct and indirect costs or savings to those affected: The statute limits the size of these facilities to a maximum of 8 beds. As currently written, an allowance is made in the percentage of full-time professional staff for a facility of less than 16 beds. While this provision of the regulation may decrease costs, providers indicate that some costs may escalate due to economies of scale. This program's history in Kentucky is insufficient to allow an exact estimate of any increase or decrease in costs associated with these amendments.

1. First year: Unknown

2. Continuing costs or savings: Unknown

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

(b) Reporting and paperwork requirements: No additional requirements are imposed.

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements are imposed.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with the provisions of HB 554 of the 1992 General Assembly.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Some effort was made to allow for some staffing variances for smaller facilities.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 250.33, 250.73, 255, 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39) [~~PL 101-508~~]

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC. This administrative regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Assistance group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent, and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Combination programs" means any educational program

which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(9) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(11) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation.

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(14) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(15) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(16) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(17) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(19) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(20) "Recoupment" means recovery of overpayments of assistance payments.

(21) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(22) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(23) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(24) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(25) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

(26) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the assistance group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent. [~~Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual and his parent, even if the parent is not an applicant or recipient, if the applicant or recipient is a dependent child living in the home of the parent, shall be considered.~~]

(2) The amount that can be reserved by each assistance group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (3) of this section as follows:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot or space per family member;

(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items or benefits mandated by federal regulations.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not

exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent, sanctioned individual and amount deemed available from the parent of a minor parent living in the home with such assistance group, and amount deemed available from a stepparent living in the home, and the spouse of a minor dependent child living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard.

(b) Disregards specified in Section 4(1) of this regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The assistance group has not received assistance during the four (4) months prior to the month of application.

(b) The total gross income after application of exclusions or disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation.

(c) If income exceeds this standard, the assistance group is ineligible.

(d) For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation.

(b) If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for an applicant or recipient whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the assistance group would have received also changes.

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group.

3. The assistance group incurs and pays necessary medical expenses not reimbursable by a third party.

Section 4. Excluded or Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, sanctioned individual, natural parent and parent of a minor parent living in the home with such assistance group and stepparent living in the home, shall be considered with the applicable exclusions or disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded or disregarded:

(a) Disregards applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the assistance group, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income;

(d) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(g) Nonemergency medical transportation payments;

(h) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce utilized for household consumption;

(n) Housing subsidies received from federal, state or local governments;

(o) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(q) Benefits received from the Nutrition Program for the Elderly, under 42 USC 3001;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under 42 USC 5001 and 5011;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(t) The value of supplemental food assistance received under 42 USC 1771, and the special food service program for children under 42 USC 1755, as amended;

(u) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care;

(v) Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(w) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(x) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; [~~and~~]

(z) Effective January 3, 1989, loans;

(aa) Effective June 1, 1989, up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(bb) Effective June 1, 1989, the essential person's portion of the SSI check;

(cc) Income of an individual receiving mandatory or optional state supplementary payments;

(dd) The advance payment or refund of earned income tax credit (EITC);

(ee) Other benefits mandated by federal regulations or legislation; and [.]

(ff) The difference between the standard of need and the payment maximum for the assistance group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend.

(2) Applicant eligibility test. The exclusions or disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $175 per month per individual for full-time employment or $150 per month per individual for part-time employment, or $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child, for example, handicapped or retarded children; or

7. The parent is temporarily absent from work on approved educational leave.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(c) Fails to report increases [~~changes~~] in earnings which impact eligibility within ten (10) days of the change, unless good cause exists as follows:

1. The assistance group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child, the spouse of a minor dependent child, and parent living in the home with a minor parent but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions or disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent, spouse of a minor dependent child, or parent of a minor parent and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent, spouse of a minor dependent child, or parent of a minor parent as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent, spouse of a minor dependent child, or parent of a minor parent to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his personal income tax liability;

(d) Payments by the stepparent, spouse of a minor dependent child, and parent of a minor parent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent, spouse of a minor dependent child, or [~~and~~] parent of a minor parent receiving Supplemental Security Income (SSI).

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusions listed in this section.

(3) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, or [~~and~~] parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child or the assistance group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to disregards as set forth below, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or

organization is no longer in existence or does not have the financial ability to meet the alien's needs.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

	Effective July 1, 1989	
Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) With the exception of those in subsections (8) and (12) of this section those individuals participating in the JOBS program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.

(2) JOBS activities are described in 904 KAR 2:006, Section 9.

(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

(4) Child care eligibility in self-initiated activities.

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

1. OJT participants discontinued due to increased earnings or hours of employment;

2. Component preparation; and

3. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Child care shall be provided only for approved self-initiated activities.

(5) Child care limitations.

(a) Child care payments shall:

1. Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.

2. Be allowed as a deduction as outlined in Section 4(2)(d) of this regulation for any component yielding earned income.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. A member of the AFDC assistance unit which includes the child needing care;

4. Not meeting applicable standards of state and local law; or

5. Not allowing parental access.

(c) Local market rates shall be determined by:

1. The type of provider;

2. The age of the child;

3. The special needs of the child. Special needs shall be verified by:

a. Entitlement to disability benefits; or

b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age (6) six;

5. "School-age" includes children age (6) six and over.

(f) For needs incurred on or after April 1, 1992, child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	13	10	13	10
Certified	$12	12	12	9	12	9	12	9	12	9
Unregulated	$11	11	11	8	11	8	11	8	11	8

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	11	8	11	8	11	8
Certified	$12	12	12	9	10	7	10	7	10	7
Unregulated	$11	11	11	8	9	6	9	6	9	6

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$15	15	15	12	15	12	14	11	12	9
Certified	$14	14	14	11	14	11	13	10	11	8
Unregulated	$13	13	13	10	13	10	12	9	10	7

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$16	16	16	13	14	11	14	11	13	10
Certified	$15	15	15	12	13	10	13	10	12	9
Unregulated	$14	14	14	11	12	9	12	9	11	8

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	11	8	9	6	9	6
Certified	$11	11	11	8	10	7	8	5	8	5
Unregulated	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	9	6	9	6	9	6	9	6
Certified	$10	10	8	5	8	5	8	5	8	5
Unregulated	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	11	8	11	8
Certified	$12	12	12	9	12	9	10	7	10	7
Unregulated	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	11	8	11	8	11	8
Certified	$10	10	10	7	10	7	10	7	10	7
Unregulated	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	10	7	10	7	10	7	10	7
Certified	$10	10	9	6	9	6	9	6	9	6
Unregulated	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and

2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncom-

pliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation, with the exception of OJT while the AFDC case remains active;

(d) Transitional extension; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

3. Transitional extension; or

4. OJT participants discontinued from AFDC, until the end of the component placement.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;

2. Necessary clothing; or

3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment; or

(c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;

2. Component-related;

3. Transitional extension; or

4. OJT participants discontinued due to increased earnings or hours of employment.

(b) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 9. AFDC Recoupment. Except for those overpayments in Section 10 of this administrative regulation the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned [~~in accordance with Title 904, Chapter 2~~].

Section 10. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments.

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

(a) Of fraud;

(b) Involving a current recipient; and

(c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction in child care payments; or

(c) Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 11. Correction of Underpayments. The following provisions apply to all AFDC payments:

(1) The department shall promptly correct an underpayment to:

(a) A current AFDC recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 12. [~~10.~~] Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990. These forms include the PA-33, revised 10/90, the PA-33.1, revised 10/90, and the PA-32, revised 10/90.

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

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: October 13, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1999, 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: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: 1) Child care recoupment - This amendment has the potential to affect all JOBS participants receiving child care supportive services. In June 1992, there was a total of 4,148 JOBS participants receiving child care payments. 2) Correction of underpayments -This is a clarification to existing policy and should not affect any entities. 3) Real and personal property - This is a clarification to existing policy and should not affect any entities. 4) Spouse of minor dependent child - This is a clarification to existing policy and should not affect any entities. 5) Allowable disregards - This amendment has the potential to affect all AFDC recipients who are employed. In June 1992, there was a total of 10,568 AFDC cases with earned income.

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

1. First year: a) Child care recoupment - There will be no savings to those affected by this change. There is no way to determine the cost as we have no data to anticipate how many payments will be recouped. b) Correction of underpayments - As this is incorporating current policy, there is no cost or savings to regulated entities. c) Real and personal property - No cost or savings involved as this is a clarification to existing policy. d) Spouse of a minor dependent child - No cost or savings included as this is a clarification to existing policy. e) Allowable disregards - There is no way to speculate on the savings to those affected by this change as there is no way to determine how many changes in earned income reported in an untimely manner are actually increases.

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: 1) Child care recoupment - Minor - See "Reporting and paperwork requirements" below. 2) Correction of underpayments - None. 3) Real and personal property - None. 4) Spouse of minor dependent child - None. 5) Allowable disregards - None.

(a) Direct and indirect costs or savings:

1. First year: Same as those affected.

2. Continuing costs or savings: Same as those affected.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 1) Child care recoupment - DIS staff will have to calculate overpayments and an accounts receivable report will have to be kept using existing procedures. 2) Correction of underpayments - None. 3) Real and personal property - None. 4) Spouse of minor dependent child -None. 5) Allowable disregards - None.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: With the exception of allowable disregards, these changes are federally mandated. The decision to alter wording from "changes" to "increases", as it relates to timely reports in earnings, was an internal decision. It was less punitive to those who failed to report timely a decrease in income while focusing on those changes more apt to cause an incorrect benefit and resulting claim.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.20(a)(3)(vi)(A), 255.4(i)(4) and 233.20(a)(13).

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. Federal requirements advise that states must take all reasonable measures to correct overpayments of child care payments and underpayments of financial assistance payments.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

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

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

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

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq., Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended and Augustus F. Hawkins Human Services Reauthorization Act of 1990 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This regulation states the eligibility and benefits criteria for energy assistance.

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

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

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

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

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

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

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

(8) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and who share complete kitchen facilities for the exclusive use of the individual or individuals.

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

(10) "Principal residence" means the place:

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

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(11) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider.

(12) "HEAP" means home energy assistance program and shall refer to the heating assistance portion of LIHEAP.

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

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross income shall be at or below 110% of the federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services.

(b) Excluded from income are:

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

(2) Liquid assets.

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

(b) Excluded assets are:

1. Cars;
2. Household or personal belongings;
3. Principal residence;
4. Cash surrender value of insurance policies;
5. Prepaid burial policies;
6. Real property; and
7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) Crisis component.

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

(b) Be without heat; or

(c) Be without fuel within five (5) days; or

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

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

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

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

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

(c) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits. Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(d) Benefit matrix subsidy component.

Households Income as a Percent of 100% Federal Poverty Level	Benefit Amount as a Percent of Heating Season Energy Costs (October through April)
0- 22%	18.5%
23- 44%	16.5%
45- 66%	14.5%
67- 88%	12.5%
89-110%	10.5%

(2) Crisis component. Benefits to households shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets, or emergency shelter. Space heaters shall be a temporary service and shall be

loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

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

(b) A household shall receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuels determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation.

(d)[~~1.~~] A household needing a heat system repair shall be referred to the local weatherization program.

[~~2. Weatherization program staff shall evaluate the heating system and have all repairs, necessary to make the system operable, performed as soon as possible.~~

~~3. Repairs shall be considered an emergency and shall supersede all other dwellings being considered for weatherization services at the time.~~]

Section 5. Benefit Delivery Methods. (1) Payment under the subsidy component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent. At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, no direct cash payments shall be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, emergency lodging, or restoration or continuation of service.

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

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

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

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

Section 8. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted beginning November 9, 1992 [~~4, 1991~~] and ending by December 11, 1992 [~~November 27, 1991. Applications shall be accepted after November 27, 1991 until the opening of the crisis component for any household unable to apply during the regular application period~~].

(b) Applications for the crisis component shall be accepted beginning January 4, 1993 [~~6, 1991~~] and ending by March 31, 1993 [~~1992~~], or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

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

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the federal LIHEAP allocation shall be reserved for weatherization assistance. These funds shall be used for regular weatherization services and for all heating system repairs identified during the subsidy and crisis components of HEAP.

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(3) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's share of nonduplicated households assisted in the preceding year's crisis component.

(4) Each agency shall reserve ten (10) percent of the allocation under subsection (3) of this section to assure component availability until March 31, 1992 for emergency crisis assistance for households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

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

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

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

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;

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

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

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

MIKE ROBINSON, Commissioner
LEONARD E. HELLER., Secretary

APPROVED BY AGENCY: October 13, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at the Department for Social Insurance Conference Room, 3rd Floor West, Cabinet for Human Resources Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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: Masten Childers II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, 502/564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Randall

(1) Type and number of entities affected: Amendment of this regulation is necessary to be in compliance with the federal fiscal

year 1993 Low Income Home Energy Assistance program (LIHEAP) Block Grant. LIHEAP will have two heating assistance components: Subsidy and Crisis. Subsidy will provide heating assistance benefits to up to 124,000 households, and crisis will provide heating assistance benefits to up to 67,500 households experiencing a heating crisis. The 23 local community action agencies will operate the program.

(a) Direct and indirect costs or savings to those affected: In the subsidy component, all eligible households that apply will receive benefits to average $113 per household. To the extent that funds remain available, assistance will be provided to eligible households experiencing a crisis, and will be the minimum necessary to alleviate the crisis. Assistance may be fuel or other energy for heating, heaters, blankets, or emergency shelters. The average crisis benefits per household is estimated at $74. Administrative funds accounting for not less than 10 percent of the reimbursable benefit costs will be made available to reimburse the community action agencies for allowable administrative costs.

1. First year: A total of up to $18.9 million shall be available for heating assistance benefits. Up to $14,000,000 shall be allocated for subsidy and the balance, including all unexpended funds from subsidy will be allocated to the crisis component. Up to $1.9 million shall be available to reimburse administrative costs.

2. Continuing costs or savings: The LIHEAP Block Grant Application and Plan Narrative is submitted annually and is based upon the estimated federal appropriation level. There will not be any continuing costs or savings under the amendments being made to the regulation in accordance with the requirements of the current state plan.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of LIHEAP.

(a) Direct and indirect costs or savings: Up to 10 percent of the LIHEAP Block Grant allocation (including Energy Assistance Trust Funds appropriated to LIHEAP by the General Assembly) and not transferred to another block grant may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing costs or savings: There will not be any continuing costs or savings under the current state plan.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: The LIHEAP shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditures for the state fiscal year 1993 Energy Assistance Trust Fund appropriation ($4.346 million) will reduce the amount of funds invested to the trust fund and then reduce the amount of interest revenues earned by the trust fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended in accordance with the requirements of the federal fiscal year 1993 LIHEAP State Plan which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse Program. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funds for the 2 components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the State Plan. The public review and comment supported the funding levels.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No additional comments or information.

TIERING: Was tiering applied? Yes. Federal regulations give states the flexibility to determine the eligibility criteria from 110% - 150% of the poverty level. In order to have sufficient funds to provide benefits to the most needy households, and to reduce the number of potential households, the lower end of the spectrum or 110% of the poverty level has been chosen. Benefits will be provided so that those households with the lowest income and the highest energy cost in relation to income will receive the highest benefits.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, Omnibus Budget Reconciliation Act of 1981, as amended and Augustus F. Hawkins Human Services Reauthorization Act of 1990.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. The statute requires that local administering agencies administering similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or related to other factors affecting the availability of residential energy.

4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, it is necessary to target assistance to those households most in need.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:050. Additional provisions.

RELATES TO: KRS 194.050, 7 CFR 272.1, 272.5, [~~273.16,~~] 273.17, 273.18, 273.18(d)(4)(iii), 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~is required to~~] administer a Food Stamp Program as prescribed under 7 USC 2011 to 2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth additional provisions used by the cabinet in the administration of the Food Stamp Program. [~~This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.~~]

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if a household has lost benefits:

(a) Due to an administrative error;

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claims the household may have.

Section 3. Program Informational Activities. (1) Low-income or disadvantaged households shall be informed of the availability of the program, program rights and responsibilities through program informational activities including posters and pamphlets from the food and nutrition service.

(2) Other programs that households shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children (WIC); and

(b) Expanded Food and Nutrition Education Program (EFNEP).

Section 4. Identification of Claims Against Households. The cabinet shall establish a claim against a household that receives more food stamp benefits than it is entitled to receive.

Section 5. Classification of Claims. Claims shall be classified as:

(1) Inadvertent household error claims. Overissuance was due to:

(a) A misunderstanding or unintended error on the part of the household;

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving SSI; or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 904 KAR 3:030, Section 5, that receives food stamps solely because of categorical eligibility, and is subsequently determined ineligible for either PA or SSI or both.

(2) Administrative error claims. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits; or

(d) Continuing to issue benefits after the certification period expired without a reapplication determination.

(3) Intentional program violation claims.

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 904 KAR Chapter 3, or any state statute relating to the Food Stamp Program.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A court of appropriate jurisdiction;

3. An individual signing either a waiver of his disqualification hearing; or

4. An individual signing a disqualification consent agreement in cases referred for prosecution.

Section 6. Collecting Claims Against Households. The cabinet shall initiate collection action against households with an established claim in accordance with the following criteria:

(1) All claims identified in Section 5 of this regulation, as inadvertent household and administrative error claims, shall have collection action initiated unless the:

(a) Claim is collected through offset;

(b) Claim is less than thirty-five (35) dollars and cannot be recovered by coupon reduction; or

(c) Department has documentation that the household cannot be located.

(2) A claim identified in Section 5 of this regulation, as an intentional program violation claim, shall have collection action initiated unless:

(a) The household has repaid the overissuance;

(b) The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution.

(3) Payments for claims against the household shall be collected as follows:

(a) If the household is financially able to pay the entire amount of the claim, either as cash payment or food stamp coupons, by lump

sum payment;

(b) Installments as negotiated with the household either as cash payment or food stamp coupons; or

(c) Reduction in the food stamp allotment in accordance with the following criteria:

1. For inadvertent household error claims, the amount of reduction shall be the greater of ten (10) percent of the household's monthly allotment or ten (10) dollars per month;

2. For administrative error claims, the amount of reduction shall be negotiated with the household;

3. For intentional program violation error claims, the amount of reduction shall be the greater of twenty (20) percent of the household's monthly entitlement or ten (10) dollars per month.

(4) An individual who has defaulted on repayment of his debt shall have such debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

2. An inadvertent household error as described in Section 5(1) of this administrative regulation; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;

2. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

3. An inadvertent household error as described in Section 5(1) of this administrative regulation.

(5) [~~(4)~~] Disqualification from the Food Stamp Program shall be imposed on an individual with intentional program violation error claims. The individual shall be ineligible to participate in the program:

(a) For the first violation, six (6) months;

(b) For the second violation, twelve (12) months; and

(c) For the third violation, permanently.

Section 7. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Persons directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029;

(b) Other federal assistance programs; or

(c) Federally aided state programs which provide assistance, on a means-tested basis, to low income households;

(2) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(3) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

(a) The identity of the person requesting the information and his authority to do so;

(b) The nature of the violation being investigated; and

(c) The identity of the person about whom the information is requested.

Section 8. General Program Information. 904 KAR Chapter 3 shall be maintained in the central and local office for examination by members of the public on regular workdays during regular office hours. Copies of administrative regulations, may be obtained from the cabinet. Federal laws and regulations shall be maintained by the central office and the FNS and shall be available for inspection and copying.

Section 9. Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 10. Disaster Certification. The cabinet shall distribute emergency coupon allotments to a household within a food stamp county determined to be a disaster area:

(1) In accordance with 42 USC 5122, authorized by the Food and Nutrition Service of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) In accordance with 7 USC 2011-2029, authorized by the Food and Nutrition Service as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: October 11, 1992

FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1999, 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: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: The regulation is promulgated to implement 56 FR 41325-31, 57 FR 39176-77, 7 CFR 273.18(d)(4)(iii), and 26 CFR 301.6402-6T. The provisions permit the state agency to implement the state and federal income tax intercept programs as an alternative method of collections. Individuals who have defaulted on repayment of an intentional program violation or inadvertent household error claim will be subject to the income tax return programs. The department anticipates that the specified programs will affect 5,335 households which have a delinquent claim and are no longer receiving food stamp benefits.

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

1. First year: $250,000

2. Continuing costs or savings: Cost - $500,000 annually.

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: $250,000. Of the $250,000 in increased collections, the state's share will be $37,500. The direct and indirect cost of operating the income tax intercept programs to the state will be $25,000. Thus, the state will net a savings of $12,500 during the first year of the specified programs.

2. Continuing costs or savings: $500,000 annually. Of the $500,000 in increased collections, the state's share will be $75,000.

The direct and indirect cost of operating the income tax intercept programs to the state will be $50,000. Thus, the state expects to net a savings of $25,000 during the continuation of the specified programs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The state agency shall notify the debtor of its intention to refer a claim for offset through the income tax intercept programs, and shall give the debtor at least sixty days to appeal the intended offset by presenting evidence that all or part of the claim is not past due or legally enforceable. There are no additional reporting requirements as a result of implementing the income tax intercept programs.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The above specified programs are proven effective means of increasing collection of claims which are delinquent in Alabama and California.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 56 FR 41325-31; 57 FR 39176-77; 7 CFR 273.18(d)(4)(iii); 26 CFR 301.6402-6T.

2. State compliance standards. This regulation pertains to miscellaneous provisions, including claims collection, of the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The mandate requires states to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment, or make payment, on a claim. The amendment to the regulation allows the state agency to implement additional methods of collecting delinquent claims. The requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with claims collection procedures which are governed by the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal regulations.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 1992

LEGISLATIVE RESEARCH COMMISSION
Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures.

RELATES TO: KRS Chapter 7A
STATUTORY AUTHORITY: KRS 7A.140
NECESSITY AND FUNCTION: KRS 7A.140 authorizes the Capital Planning Advisory Board to adopt any administrative regulations necessary to carry out its planning and advisory functions. The purpose of this administrative regulation is to establish the policies and procedures for the capital planning process.

Section 1. State agencies and institutions of public higher education shall submit information specified by the board in the document entitled "Six-Year Capital Plan Instructions." This document is incorporated by reference and may be reviewed or obtained at the office of the Capital Planning Advisory Board, Room 002, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m. (ET).

Section 2. Agencies providing information to the Kentucky Information Systems Commission pursuant to KRS 61.950 shall not be required to provide that information directly to the board.

(1) The Kentucky Information Systems Commission shall provide the board with the following information by July 1 of each odd-numbered year:

(a) List and approval or disapproval status of all submitted computing and communications items or systems having capital project status;

(b) List of selected computing and communications items or systems having capital project status on which the Kentucky Information Systems Commission places high value; and

(c) Report of any statewide initiatives involving multiple-agency projects for which the Kentucky Information Systems Commission seeks the support and endorsement of the board.

(2) The board may use the information received from the Kentucky Information Systems Commission in the formulation of the board's statewide six (6) year capital improvements plan.

Section 3. As provided in KRS 164.020(5), the Council on Higher Education shall consider the requirements and review the six (6) year capital plans of the institutions of public higher education. The plans shall be prepared in the manner and submitted by the institutions to the council by dates prescribed by the board. The institutions' individual six (6) year capital plans, along with the council's system capital plan for higher education, shall be submitted to the board by April 15 of each odd-numbered year.

Section 4. the board shall exclude road projects from its information request. Instead, the board will accept, for review only, the Biennial Highway Construction Program developed by the Transportation Cabinet pursuant to KRS Chapters 45 and 48, and the additional four (4) year highway construction plan developed pursuant to KRS Chapter 176.

(1) The Transportation Cabinet shall submit to the board copies of the recommended updates to the most recently enacted Biennial Highway Construction Program and the additional four (4) year highway construction plan by July 15 of each odd-numbered year.

(2) The board may use the information received from the Transportation Cabinet in the formulation of the board's statewide six (6) year capital improvements plan.

Section 5. 1 KAR 6:010, Policies and procedures, is hereby repealed.

REPRESENTATIVE MARSHALL LONG, Chairman
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 18, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held November 23 at 10 a.m. in Room 113, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 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: Mr. Ed Sergent, Administrator, Capitol Planning Advisory Board, Room 002A, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: All state agencies and universities as defined by KRS 7A.010.

(a) Direct and indirect costs or savings to those affected: Not applicable.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: State agencies and universities are required to submit specified information on their projected capital needs, to be used by the Capital Planning Advisory Board in developing a statewide 6-year capital improvement plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Not applicable.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Not applicable.

(3) Assessment of anticipated effect on state and local revenues: Not applicable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The Administrative Regulation merely specifies the details of the statutory requirements for the information to be submitted by state agencies and universities. There is no fiscal or programmatic impact added by the regulation.

TIERING: Is tiering applied? (Explain why tiering is or is not applied) Yes. The instructions incorporated by reference into the regulations are tailored to address the technical distinctions between state agencies and universities. Also, according to the same instructions, the universities have an additional reporting requirement to the Council on Higher Education, and the Transportation Cabinet is exempt from submitting capital planning information on road projects.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:020. General provisions.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapters 121 and 121A. The purpose of this administrative regulation is to establish general provisions which shall apply throughout this chapter governing practice and procedure.

Section 1. Definitions. (1) "Chairman" means the Chairman of the Registry of Election Finance.

(2) "Complainant" means any person who files a complaint with the Registry of Election Finance alleging a violation of campaign finance laws or administrative regulations.

(3) "Complaint" means an allegation filed with the Registry of Election Finance charging that a violation of campaign finance statutes or administrative regulations has occurred or is about to occur.

(4) "Conciliation agreement" means an agreement offered by the Registry of Election Finance to an alleged violator of campaign finance laws or administrative regulations as provided in KRS 121.140.

(5) "General counsel" means the general counsel of the Registry of Election Finance.

(6) "Registry" means the Registry of Election Finance.

(7) "Respondent" means any person against whom a complaint has been filed with the Registry of Election Finance or against whom action is taken by the registry based upon information ascertained through its normal enforcement activity.

(8) "Three (3) judge panel" means a panel of three (3) active or retired justices or judges of the Court of Justice appointed by the Chief Justice of the Kentucky Supreme Court to conduct a hearing as provided in KRS 121.140.

Section 2. Scope. This chapter provides procedures for processing possible violations of campaign finance statutes and administrative regulations promulgated by the Registry of Election Finance.

Section 3. Computation of Time. (1) General provision. In computing any period of time prescribed or allowed by this administrative regulation, the provisions of KRS 446.030 shall govern, except as provided in subsection (2) of this section.

(2) Special provision for service by mail. When the registry or any person has the right or is required to do some act within a prescribed period of time after the service of any document by or upon the registry or a person, and the document is served by mail, three (3) days shall be added to the prescribed period.

Section 4. Initiation of Enforcement Matters. Enforcement matters may be initiated by a complaint or on the basis of information ascertained by the registry in the normal course of conducting its enforcement duties.

Section 5. Ex Parte Communications. (1) In order to avoid the possibility of prejudice, real or apparent, in derogation of the public interest in enforcement actions pending before the registry, except to the extent required during an investigation or conciliation negotiations, no interested person outside the agency shall make or cause to be made to any registry member or employee any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any registry member or employee make or entertain such ex parte communication.

(2) This prohibition against ex parte communications shall apply from the time a complaint is filed with the registry or from the time that the registry determines on the basis of information ascertained in the normal course of its duties that it has reason to believe that a violation has occurred or may occur, and shall remain in effect until the registry has concluded all action with respect to the enforcement matter in question.

(3) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any registry employee in the performance of his duties. No statement made by a registry employee during such communication shall bind or estop the registry in any way.

Section 6. Representation by Counsel; Notification. (1) If a respondent wishes to be represented by counsel with regard to any matter pending before the registry, respondent shall so advise the registry by sending a letter of representation signed by the respondent, which shall contain the name, address, and telephone number of the counsel and a statement authorizing such counsel to receive all notifications and other communications from the registry on behalf of the respondent.

(2) Upon receipt of a letter of representation, the registry shall have no contact with respondent except through the designated counsel unless requested in writing by respondent.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 6, 1992 at 1 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all citizens of the Commonwealth, but particularly those who may be party to a matter before the registry.

(a) Direct and indirect costs or savings to those affected: These are general provisions and will result in no direct or indirect costs or savings.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only paperwork involved would be the written notification of representation by counsel as provided in Section 6 of the administrative regulation.

(2) Effects on the promulgating administrative body: The general provisions contained in this administrative regulation will govern practice and procedure with regard to matters before the registry.

(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: The provisions of this

administrative regulation will result in no additional paperwork or reporting requirements for the agency.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no affect on state and local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because these provisions are necessary to govern practice and procedure before the registry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the statutory provisions under which this administrative regulation is promulgated apply uniformly to all affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:030. Complaints; internally-generated matters.

RELATES TO: KRS 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish the procedure to be followed by the Registry of Election Finance in processing complaints of alleged violations of campaign finance law or administrative regulations promulgated by the registry. This administrative regulation also repeals 32 KAR 2:010, Processing complaints; hearings because the provisions of that administrative regulation do not comply with the registry's current statutory authority.

Section 1. Filing Requirements. (1) Any person who believes that a violation of any campaign finance statute or administrative regulation may have occurred or is about to occur may file a complaint in writing with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(2) A complaint alleging a violation shall be filed within four (4) years after the alleged violation occurs. If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has ceased, or the date on which the complaint is filed.

(3) A complaint filed with the general counsel shall comply with the following requirements:

(a) The complaint shall provide the full name and address of the complainant.

(b) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be duly notarized.

(c) All statements contained in the complaint shall be made under penalty of perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint shall clearly identify as a respondent each person or entity who is alleged to have committed a violation or is about to commit a violation.

(e) Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of the statements contained in the complaint.

(f) The complaint shall contain a clear and concise recitation of the facts which support the allegation of a violation of a campaign finance statute or administrative regulation.

(g) The complaint shall be accompanied by any documentation supporting the allegations if such documentation is known by and available to the complainant.

Section 2. Initial Complaint Processing; Notification. (1) Upon receipt of a complaint, the general counsel shall review the complaint for substantial compliance with the technical requirements of Section 1 of this administrative regulation. If the complaint complies with those requirements, the general counsel shall, within five (5) days after receipt of the complaint, notify each respondent that the complaint has been filed, advise them of registry procedures, and enclose a copy of the complaint and supporting documentation.

(2) If a complaint fails to comply with the requirements of Section 1 of this administrative regulation, the general counsel shall notify the complainant and person or entity identified as respondents, within the five (5) day period specified in subsection (1) of this section, that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent. The notification shall include an explanation of the reasons the complaint fails to comply.

Section 3. Opportunity to Demonstrate that no Action Should be Taken on Complaint-Generated Matters. (1) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the registry should take no action.

(2) The registry shall not take any action, or make any finding against a respondent other than action dismissing the complaint, unless it has considered such response or unless no response has been served upon the registry within the fifteen (15) day period prescribed in subsection (1) of this section.

Section 4. Reason to Believe Finding. (1) Following either the expiration of the fifteen (15) day period prescribed by Section 3 of this administrative regulation, or receipt of a response from the respondent, whichever occurs first, the general counsel shall determine whether there is reason to believe that a respondent may have violated or is about to violate a campaign statute or administrative regulation.

(2) If the general counsel determines that there is reason to believe that a violation may have occurred or is about to occur, an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(3) If the general counsel determines that there is no reason to believe that a violation may have occurred or is about to occur, he shall recommend to the registry that the complaint be dismissed. The registry shall determine whether to accept or reject the general counsel's recommendation.

Section 5. Referrals. (1) On the basis of information ascertained by the registry in the normal course of performing its enforcement duties, or on the basis or referral from an agency of the United States or of any state, the general counsel may find reason to believe that a person or entity may have committed or is about to commit a violation of campaign finance statutes or administrative regulations, and an investigation shall commence as provided in Section 2 of 32 KAR 2:040.

(2) If the general counsel finds reason to believe that a violation may have occurred or is about to occur, the notification to the respondent required by Section 2 of this administrative regulation shall include a copy of a staff report setting forth the legal basis for and the alleged facts which support the general counsel's finding.

(3) Prior to taking action against any person who has failed to file a disclosure report required by KRS 121.180(3)(a) for the calendar quarter immediately preceding the election involved or by KRS 61.740, the registry shall notify such person of failure to file the

required reports. If a satisfactory response is not received within four (4) business days, the registry shall publish before the election the name of the person and the report or reports such person has failed to file.

Section 6. Reopening of Proceedings. After a hearing and the issuance of a final order, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all parties and intervenors, and may take the action it deems necessary.

Section 7. Certification. The chairman or the executive director may certify all documents or records which are a part of the files of the registry.

Section 8. Construction; Harmless Error. (1) These administrative regulations shall be liberally construed to effectuate the purposes and provisions of KRS Chapters 121 and 121A, and the policies of the Kentucky Registry of Election Finance.

(2) All pleadings shall be liberally construed with a view to effect justice, and the registry shall, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not substantially affect the rights of the parties.

Section 9. 32 KAR 2:010, Processing complaints; hearings, is hereby repealed.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all persons who may be party to an action before the registry.

(a) Direct and indirect costs or savings to those affected: 1. First year: The only costs would be those resulting from the preparation and filing of complaints and other documents with the registry. There would be no savings as a result of this administrative regulation.

2. Continuing costs or savings: The only costs would be those resulting from the preparation and filing of complaints and other documents with the registry. There would be no savings as a result of this administrative regulation.

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

(b) Reporting and paperwork requirements: All complaints are required to be submitted in writing.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs to the agency will be the staff time required to process complaints and internally-generated matters.

2. Continuing costs or savings: The costs to the agency will be the staff time required to process complaints and internally-generated matters.

3. Additional factors increasing or decreasing costs: Costs will increase or decrease in direct proportion to the number of complaints and internally-generated matters which are processed by the registry.

(b) Reporting and paperwork requirements: The paperwork for the agency would be the normal paperwork associated with processing complaints and internally-generated matters.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the method of processing complaints must be consistent with statutory provisions and individual constitutional rights of due process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the procedures for processing complaints and internally-generated matters apply uniformly to all affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:040. Preconciliation procedures.

RELATES TO: KRS 121.120, 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a procedure for processing complaints or internally-generated matters prior to the conciliation process established by Senate Bill 221 enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.

Section 1. Reason to Believe Finding. (1) If the general counsel, either after reviewing a complaint and any response of a respondent submitted pursuant to Section 3 of 32 KAR 2:030, or after reviewing an internally-generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.

(2) If the general counsel finds no reason to believe that a violation occurred or otherwise terminates its proceedings, the general counsel shall so advise both the complainant and respondent by letter.

Section 2. Investigations. (1) An investigation shall be conducted in any case in which the general counsel finds reason to believe that a violation of a campaign finance statute or administrative regulation may have occurred or is about to occur, or at the direction of the registry if the general counsel's recommendation of dismissal is rejected.

(2) In its investigation, the registry may utilize the provisions of Sections 3 to 7 of this administrative regulation. The investigation may include, but shall not be limited to, field investigations, audits, and

other methods of information gathering.

Section 3. Written Question Under Oath. The registry may authorize its chairman or general counsel to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which the answers shall be submitted.

Section 4. Subpoenas; Depositions. (1) The registry may authorize its chairman or general counsel to issue subpoenas requiring the attendance and testimony of any person by deposition or at a hearing. Further the registry may issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with an investigation, deposition, or a hearing.

(2) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be given under oath. A deposition may be taken before any person having the power to administer oaths.

(3) The Kentucky Rules of Civil Procedure, Rule 30.05, shall govern the opportunity to review and sign depositions taken pursuant to this section.

Section 5. Service of Subpoenas, Orders, and Notifications. (1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by this section. In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.

(2) When service is to be made upon a person who has advised the registry of representation by an attorney, the service shall be made upon the attorney by any of the methods specified in subsection (3) of this section and a copy shall be sent to the individual.

(3) Delivery of subpoenas, orders, and notifications to a natural person may be made by handing a copy to the person, by leaving a copy at his dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his last known address, or by any other method whereby actual notice is given. When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to the representative at his last known address, or by any other method by which actual notice is given.

Section 6. Witness Fees and Mileage. (1) Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the Commonwealth of Kentucky. These fees may be tendered at the time the witness appears for the deposition or within a reasonable time thereafter.

Section 7. Motions to Quash or Modify a Subpoena. (1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no later than five (5) days after the date of receipt of the subpoena, move the registry to quash or modify the subpoena, accompanying the motion with a brief statement of the reasons therefore. Motions to quash shall be filed with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Three (3) copies shall be submitted.

(2) The registry may deny the motion, quash the subpoena, or modify the subpoena.

(3) The person subpoenaed and the general counsel may agree to change the date, time, or place of a deposition or the conditions for the production of documents without affecting the force and effect of the subpoena, but any modifications shall be confirmed in writing.

Section 8. Briefing Procedures. (1) Upon completion of the investigation, the general counsel shall make a report of the findings of the registry. If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case. The registry may also request the respondent to appear to present additional information, or the respondent may request that he be allowed to present additional evidence. The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

(2) The general counsel shall provide a copy of his brief to the respondent who may, within fifteen (15) days of receipt of the general counsel's brief, file a brief with the registry setting forth his position on the factual and legal issue of the case. Ten (10) copies of the brief shall be filed with the executive director and three (3) copies shall be filed with the general counsel.

Section 9. Probable Cause Finding; Notification. (1) If the registry determines that there is probable cause to believe that a respondent may have or is about to violate a campaign finance statute or administrative regulation, the general counsel shall notify the respondent and complainant by letter.

(2) If the registry finds no probable cause or otherwise orders a termination of its proceedings, the general counsel shall notify respondent and complainant by letter.

Section 10. Noncompliance with Reporting Requirements; Probable Cause Determination. (1) If any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section, such failure to file a report due in a timely manner shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the respondent. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to file any report required under the campaign finance laws.

(2) A conciliation agreement reached pursuant to this section shall not be binding upon either party until it is signed by the respondent, the general counsel and the executive director, and approved by the registry.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative

regulation affects all persons who may be party to an action before the registry.

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

1. First year: The costs to the affected persons would be those involved with preparation of various pleadings, briefs, etc. No savings would result from this administrative regulation.

2. Continuing costs or savings: The costs to the affected persons would be those involved with preparation of various pleadings, briefs, etc. No savings would result from this administrative regulation.

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

(b) Reporting and paperwork requirements: Paperwork requirements will be those involved in responding to written questions under oath, brief preparation, and preparation of pleadings and other documentation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The registry will incur costs of investigations, depositions, service of process, witness fees, and staff time required for conducting all preconciliation procedures. No apparent savings will result from this administrative regulation.

2. Continuing costs or savings: The registry will incur costs of investigations, depositions, service of process, witness fees, and staff time required for conducting all preconciliation procedures. No apparent savings will result from this administrative regulation.

3. Additional factors increasing or decreasing costs: Costs will increase or decrease in direct proportion to the number of cases and the amount of resources devoted to each.

(b) Reporting and paperwork requirements: The paperwork will be the usual paperwork involved in matters before the registry.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the preconciliation process must comply with statutory law and individual constitutional rights.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the preconciliation requirements contained in statute and this administrative regulation apply uniformly to all affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:050. Conciliation.

RELATES TO: KRS 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with Senate Bill 221, which became effective July 14, 1992.

Section 1. Negotiations. (1) Upon a registry finding of probable cause, the general counsel and executive director shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(2) A conciliation agreement shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director and approved by the registry.

(3) If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(4) If a conciliation agreement is reached between the registry and the respondent, the general counsel shall send a copy of the signed agreement to both complainant and respondent.

Section 2. Public Disclosure of Registry Action. (1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(2) If a conciliation agreement is finalized, the registry shall make the agreement public forthwith.

(3) Except as provided in subsections (1) and (2) of this section, no complaint filed with the registry, nor any notification sent by the registry, nor any investigation conducted by the registry, nor any findings made by the registry shall be made public by the registry or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(4) Except as provided in subsections (1) and (2) of this section, no action by the registry or by any person, and no information derived in connection with conciliation efforts may be made public by the registry until a final action with regard to a conciliation attempt is taken.

(5) Nothing in this administrative regulation shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all individuals who may be party to an action before the registry.

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

1. First year: Costs involved will be those associated with returning conciliation agreements to the registry and retention by counsel if desired. If represented by counsel, a savings could be realized through early resolution of the matter.

2. Continuing costs or savings: Costs involved will be those associated with returning conciliation agreements to the registry and

retention by counsel if desired. If represented by counsel, a savings could be realized through early resolution of the matter.

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

(b) Reporting and paperwork requirements: The only paperwork involved will be the execution and submission of the agreement.

(2) Effects on the promulgating administrative body: This conciliation process will be less cumbersome than the previous hearing process, as matter can be resolved more efficiently.

(a) Direct and indirect costs or savings:

1. First year: Staff time will be saved in part since the conciliation process should be more efficient than the old system.

2. Continuing costs or savings: Staff time will be saved in part since the conciliation process should be more efficient than the old system.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The only paperwork involved will be preparation of notices, correspondence, and agreements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the statutory provisions concerning conciliation are very specific.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the provisions relative to conciliation apply to all affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:060. Advisory opinions.

RELATES TO: KRS 121.135

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance laws or administrative regulations promulgated by the registry pursuant to statutory authority. These provisions became effective July 14, 1992, and this administrative regulation is necessary to implement the process through which advisory opinions may be requested and issued.

Section 1. Requests for Advisory Opinions. (1) Any person may request in writing an advisory opinion concerning the application of campaign finance statutes or administrative regulations with regard to a particular transaction. An authorized agent of the person requesting an advisory opinion may submit the advisory opinion request, but the agent shall disclose the identity of his principal.

(2) The written advisory opinion request shall describe a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, shall not be considered.

(3) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(4) The office of general counsel shall review all requests for advisory opinions submitted to the registry. If the office of general counsel determines that a request is incomplete or otherwise fails to meet the criteria established in this section, it shall, within ten (10) calendar days of receipt of the request, notify the requesting person, of any deficiencies in the request.

(5) Advisory opinion requests shall be submitted to the Office of the General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(6) Upon receipt by the registry, each request which qualifies as an advisory opinion request (AOR) under this section shall be assigned an AOR number for reference purposes.

Section 2. Public Availability of Requests. (1) Advisory opinion requests which qualify under Section 1 of this administrative regulation shall be made public at the registry promptly upon receipt. A register shall be maintained by the registry containing a list of requests for advisory opinions and shall be updated on a regular basis. The register, copies of all requests for advisory opinions, supplemental materials, and copies of all opinions issued shall be available for public inspection at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time.

Section 3. Written Comments on Request. (1) Any interested person may submit comments concerning requests for advisory opinions made public by the registry. All comments shall be in writing and shall refer to the AOR number of the request.

(2) Written comments shall be submitted not later than ten (10) calendar days following the date the request is made public by the registry. If the tenth day falls on a Saturday, Sunday, or legal holiday, the ten (10) day period shall expire at the close of the business day next following.

(3) Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted in the discretion of the Office of General Counsel without a request.

(4) Written comments and requests for additional time to comment shall be sent to the Office of General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601.

(5) Before issuing an advisory opinion, the registry shall accept and consider all written comments submitted within the ten (10) day comment period or any extension of the normal comment period.

Section 4. Issuance of Advisory Opinions. (1) Within thirty (30) calendar days after receiving an advisory opinion request that qualifies as a valid request under Section 1 of this administrative regulation, the Office of General Counsel shall issue to the requesting party a written advisory opinion.

(2) The thirty (30) day period provided in subsection (1) of this section shall be reduced to twenty (20) calendar days for an advisory opinion request is submitted by a candidate, slate of candidates, or either of their campaign committees during the thirty (30) days preceding the date of an election as provided in KRS 121.135(2).

(3) Each advisory opinion or other registry response to a request for an advisory opinion shall be made public as provided in Section 3 of this administrative regulation and shall be delivered by mail or personally delivered to the person who requested the opinion.

Section 5. Reliance on Advisory Opinions. An advisory opinion issued by the registry may be relied upon only as provided in KRS 121.135(4).

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November

19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation will affect all individuals who wish to request an advisory opinion from the registry pursuant to KRS 121.135.

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

1. First year: Individuals requesting advisory opinions will incur only the costs involved in preparing and mailing the requests to the registry. There will be no savings.

2. Continuing costs or savings: Individuals requesting advisory opinions will incur only the costs involved in preparing and mailing the requests to the registry. There will be no savings.

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

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The only cost to the agency will be that resulting from the staff time necessary to process requests and issue opinions.

2. Continuing costs or savings: The only cost to the agency will be that resulting from the staff time necessary to process requests and issue opinions.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional paperwork will result from processing requests and issuing opinions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the requirements of KRS 121.135 are very specific.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the requirements of KRS 121.135 apply uniformly to affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:070. Fundraiser registration.

RELATES TO: KRS 121.170(2), 121A.020(5)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.020(7)

NECESSITY AND FUNCTION: KRS 121.170(2) and 121A.020(5) require persons who directly solicit and secure contributions for a candidate or slate of candidates in excess of $3,000 in an election to register as a fundraiser with the Registry of Election Finance. The purpose of this administrative regulation is to establish the procedure through which persons qualifying as fundraisers shall register with and report to the Registry of Election Finance.

Section 1. Definitions. As used in this administrative regulation, "fundraiser" shall have the meaning prescribed in KRS 121.015(11).

Section 2. Fundraiser Registration Procedure; Exemptions. (1) Any person who qualifies as a fundraiser as defined in KRS 121.015(11) or 121A.020(5) shall register with the registry immediately upon securing contributions for a candidate or slate of candidates in excess of $3,000 in an election. A fundraiser shall register by filing form KREF 92-019 (Fundraiser Registration) with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. A registered fundraiser shall comply with applicable reporting requirement as provided in KRS 121.170(2).

(2) As part of the packet of forms and instructions regularly provided to candidates by the registry, each candidate or slate of candidates shall receive all necessary forms and instructions for complying with applicable reporting requirements. It shall be the duty of the candidate, slate of candidates, or the appropriate campaign treasurer to provide the forms and reporting instructions to each person who qualifies as a fundraiser for the candidate or slate of candidates.

(3) For purposes of this administrative regulation, the following activities shall not qualify a person as a fundraiser:

(a) Serving as treasurer of a campaign committee;

(b) Performing clerical duties such as receiving contributions or preparing and filing campaign finance reports;

(c) Communicating an endorsement of a candidate or slate of candidates which indirectly results in the receipt of contributions, provided that the communication is not followed by one-on-one direct oral or written solicitation of contributions by the person making the endorsement; or

(d) Acting as host of a social event at one's residence or place of business, provided that the host does not directly solicit and secure contributions in excess of $3,000.

Section 3. Material Incorporated by Reference. Forms KREF 92-019 (Fundraiser Registration), effective 8/92 and KREF 92-020 (Fundraiser Report), effective 8/92, are hereby incorporated by reference. These forms may be obtained from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time, and are on file with the Regulations Compiler, Legislative Research Commission, State Capitol.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation will affect all individuals who directly solicit and secure

contributions in excess of $3,000 for a candidate in an election.

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

1. First year: The only costs involved will be those resulting from the preparation and filing of the registration and reporting forms. There will be no savings as a result of this administrative regulation.

2. Continuing costs or savings: The only costs involved will be those resulting from the preparation and filing of the registration and reporting forms. There will be no savings as a result of this administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The costs will increase or decrease in direct proportion to the number of forms filed.

(b) Reporting and paperwork requirements: Each person who qualifies as a fundraiser will be required to file the registration form and reports for each election in which he qualifies.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs involved will be those associated with printing forms and staff time required for processing.

2. Continuing costs or savings: The costs involved will be those associated with printing forms and staff time required for processing.

3. Additional factors increasing or decreasing costs: The costs will increase or decrease in direct proportion to the number of forms filed.

(b) Reporting and paperwork requirements: The registry staff will be required to process the forms filed as a result of this administrative regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the requirements of KRS 121.135 are very specific.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the registration and reporting requirements apply uniformly to all fundraisers.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:080. Political activities of registry members and employees.

RELATES TO: KRS 121.120(5)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.120(5) provides that registry members and employees "shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations". The purpose of this administrative regulation is to establish guidelines to govern the political activities of registry members and employees.

Section 1. To ensure the fair and efficient enforcement of campaign finance laws and administrative regulations, no registry member or employee shall engage in any activity which creates the appearance of bias or predisposition with regard to any person, political party, candidate, or committee, or as to any matter subject to registry action. No registry member or employee shall serve as a member of any committee of a political party, or as an officer or member of a committee of a partisan political club, nor shall a registry member or employee serve on a campaign committee or otherwise participate in the management or affairs of any political party or campaign. However, this regulation shall not be construed to restrict the right of a registry member or employee to exercise his rights as a citizen to privately express his political views or to vote in any election.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: September 17, 1992

FILED WITH LRC: October 6, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601. Phone (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects the 7 members of the Registry of Election Finance, as well as all registry employees.

(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: There will be no reporting and paperwork requirements as a result of the promulgation of this administrative regulation.

(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: There will be no reporting and paperwork requirements as a result of the promulgation of this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because KRS 121.120(5) specifically prohibits any registry member or employee from having any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations. The requirements of KRS 121.135 are very specific.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because the statute under which this administrative regulation is promulgated sets uniform requirements for persons affected.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:210. Patient records and patient counseling.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), (5)
NECESSITY AND FUNCTION: OBRA 90, PL 101-508, Section 4401, mandates that pharmacists implement drug utilization reviews and provide patient counseling to those recipients of health-care benefits for which federal funds are allocated. This regulation provides for this mechanism and broadens its magnitude by rendering this valuable service available to all Kentucky's citizenry, equitably.

Section 1. Definitions. (1) "Patient records" means that privileged prescription information or "profile" maintained by a pharmacist, held in confidence and communicated or released only to the patient, as the patient directs, or as prudent, professional discretion dictates.

(2) "Patient counseling" means the oral communication by a pharmacist to the patient or care giver of information pertinent to the proper use of drugs and devices in order to ensure or improve therapy.

(3) "Prescriptive drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(4) "Prospective drug use review" is an assessment of a patient's drug therapy and the prescription order prior to dispensing, as part of a drug regimen review.

(5) "Drug regimen review" includes information necessary for a pharmacist to exercise a prospective and retrospective evaluation, such as:

(a) Known allergies;
(b) Rationale for use;
(c) Proper dose, route of administration, and directions;
(d) Synergism with currently employed modalities;
(e) Interaction or adverse reaction with applicable drugs, foods, or disease states;
(f) Proper utilization for optimum therapeutic outcomes; and
(g) Clinical misuse or abuse.

Section 2. Patient Records. (1) A patient record system shall, with the exercise of professional judgment, be maintained by all pharmacies for patients for whom prescriptive drug orders are dispensed. The patient record system, or "profile", shall be readily retrievable, manual or electronic, and enable the pharmacist to identify previously dispensed drugs and disease conditions and their impact upon the newly submitted prescriptive drug order.

(2) The pharmacist shall, with the exercise of professional judgment, make a reasonable effort to obtain, record, and maintain information necessary for the pharmacist to counsel, such as:

(a) Full name of patient for whom the drug is intended;
(b) Address and telephone number of the patient;
(c) Patient's age or date of birth;
(d) Patient's gender;
(e) A list of all prescriptions obtained by the patient at the pharmacy for the past twelve (12) months by prescription number, name and strength of medication, quantity, date received, identity of prescriber, and such comments or other information as may be relevant to the specific patient or drug;
(f) Allergies, idiosyncracies, reactions or conditions relating to prospective drug use and drug regimen reviews.

Section 3. Patient Counseling. (1) Upon receipt of a prescriptive drug order and following a review of the patient's record, the pharmacist shall offer to discuss matters which, in the exercise of professional judgment, will optimize drug therapy with each patient or care giver.

(2) The discussion shall be in person when practical, or, with reasonable effort, by telephone, and shall include such appropriate elements of patient counseling as:

(a) The name and description of the drug;
(b) The dosage form, dose, route of administration, and duration of therapy;
(c) Special directions and precautions;
(d) Common adverse effects, interactions, or contraindications that may be encountered, including their avoidance and the action required should they occur;
(e) Techniques for self-monitoring of drug therapy;
(f) Proper storage;
(g) Refill information;
(h) Action to be taken in event of a missed dose; and
(i) Pharmacist's comments relevant to the individual's therapy and any other information peculiar to the specific patient or drug.

(3) Alternative forms of patient information, such as written or printed information leaflets, pictogram labels, video programs, etc., shall, with the exercise of professional judgment, be employed to supplement patient counseling when appropriate.

(4) This regulation shall not apply to:

(a) Inpatients of a hospital or institution where other licensed health-care professionals are authorized to administer the drugs; or
(b) Patient or care givers who refuse such consultation.

TOM M. HOUCHENS, President
APPROVED BY AGENCY: October 14, 1992
FILED WITH LRC: October 15, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on November 23, 1992, at 10 a.m. (EST), at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. 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, (502) 564-3833.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Julio Polio

(1) Type and number of entities affected: 3,000 pharmacists; 1100 pharmacies.

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

1. First year: Pharmacies - $1,600,000 (pharmacists' time and computer software additions).

2. Continuing costs or savings: $1,450,000 (pharmacists' time and computer maintenance).

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Possible added investigations and hearings of complaints.

(a) Direct and indirect costs or savings: Approximately 5% increase.

1. First year: $1,500

2. Continuing costs or savings: $2,000

3. Additional factors increasing or decreasing costs: Administrative costs and costs for legal counsel.

(b) Reporting and paperwork requirements: Documentation in

office files.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods possible.

(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: Implementation of this requirement is mandated law for recipients of federally-funded benefits. Kentucky law may not discriminate for any segment of society.

TIERING: Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board for Specialists in Hearing Instruments

201 KAR 7:015. Fees.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.110

STATUTORY AUTHORITY: KRS 334.050, 334.080, 334.090, 334.110, 334.150

NECESSITY AND FUNCTION: This regulation is necessitated by KRS 334.050, 334.080, 334.090 and 334.110 and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of hearing instrument specialist applications:

(1) The application fee for an apprentice permit shall be fifty (50) dollars.

(2) The application fee for a license shall be fifty (50) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the National Institute for Hearing Instrument Studies Examination shall be thirty-five (35) dollars.

(2) The fee for all portions of the state examination shall be sixty-five (65) dollars.

(3) The fee for an individual portion of the state examination shall be fifteen (15) dollars per portion.

Section 3. Original License Fees. The original license fee shall be $100 for an applicant who successfully completes all portions of the examination and application processes.

Section 4. Renewal Fees and Penalties. No person holding a license shall practice in this state after March 2 of the year in which their license is to be renewed unless such license has been renewed as provided by law and payment of the prescribed fee has been made. All licenses not renewed by March 2 following the expiration date shall be deemed expired and no person holding an expired license shall engage in the practice of fitting and selling hearing instruments. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure shall be $100.

(2) The late renewal fee, including penalty, for the grace period extending from January 31 to March 2 shall be $125.

(3) The renewal fee for renewal of licensure after March 2 shall be $150.

Section 5. Duplicate License Fees. The fee for a duplicate license shall be ten (10) dollars.

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1992, at 1 p.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 November 18, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 275 individuals credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: $50 increase in renewal fees. Examinations would create a break-even situation.

1. First year: The board does not anticipate any further increases in the near future.

2. Continuing costs or savings: All fees will continue at this level for the foreseeable future.

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. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets the application fee for potential licensees.

(a) Direct and indirect costs or savings: The change in exam fees will enable them to break even on the administration of an exam. Other fees have not been increased since 1972.

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 are deposited to a trust and agency revolving account. This is their sole source of funding.

(3) Assessment of anticipated effect on state and local revenues: These fees should generate approximately $30,000 annually 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 and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Board of Nursing

201 KAR 20:400. Delegation of nursing tasks to unlicensed persons.

RELATES TO: KRS 314.011(5), (9), (12), 314.021(2), 314.091(1)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY AND FUNCTION: To establish standards governing the delegation of nursing tasks to unlicensed persons in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Nursing.

(2) "Client" means a patient, resident or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom tasks are delegated.

(5) "Delegator" means the nurse delegating tasks to others.

(6) "Nurse" means a registered nurse or a licensed practical nurse.

(7) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

(8) "Unlicensed person" means an individual, other than a nurse, who functions in an assistant or subordinate role to the nurse. The term excludes those self-care tasks performed by a client, client's family or legal guardian.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate tasks to unlicensed persons in accordance with Sections 3 and 4 of this administrative regulation.

(2) Prior to delegating a nursing task the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation and assuring documentation.

(3) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated tasks or verified the unlicensed person's competency to perform the nursing tasks.

(4) Delegation of nursing tasks may be direct or indirect via established nursing policies and procedures. Indirect delegation in no way alters the responsibilities of the nurse for appropriately assigning and supervising an unlicensed person.

(5) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation is acting in a manner inconsistent with the practice of nursing.

Section 3. Criteria for Delegation. The delegation of nursing tasks to an unlicensed person shall meet the following criteria:

(1) The delegated nursing task must be one that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate.

(2) The delegated nursing task must be one that, in the opinion of the delegating nurse, can be competently and safely performed by the unlicensed person involved without compromising the client's welfare.

(3) The nursing task must not require the unlicensed person to exercise independent nursing judgment or intervention.

(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of delegated nursing tasks.

(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including, but not limited to, the following:

(a) The stability and acuity of the client's condition;

(b) The training and competency of the delegatee;

(c) The complexity of the nursing task being delegated; and

(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

SUSAN J. HOCKENBERGER, President
APPROVED BY AGENCY: October 8, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on November 23, 1992, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 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 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Nathan Goldman

(1) Type and number of entities affected: Will affect all RNs and LPNs, approximately 48,000 people.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1 . First year:

2. Continuing costs or savings:

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: There are no alternative methods.

(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? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners

201 KAR 21:095. Licensure and registration of persons performing peer review.

RELATES TO: KRS 312.019, 312.200(3)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.015, 312.019, 312.200
NECESSITY AND FUNCTION: KRS 312.019 authorizes the board to adopt administrative regulations. KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete an annual utilization review course and annually register with the board. This administrative regulation establishes the requirements for the licensing and registration of persons performing those review services.

Section 1. Definitions. (1) "Peer review" means an evaluation, based upon generally accepted standards, of the appropriateness, quality, utilization and cost of chiropractic health care and health service.

(2) "Accepted standards" means those standards of care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(3) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

(4) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges for those services. In determining the reasonableness of cost, factors to be considered would include the usual and customary charges by chiropractors for the same or similar services in the locality where the services were performed.

(5) "Bill for treatment" means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.

(6) "Patient" means an individual who receives treatment from a chiropractor.

(7) "Properly utilized services" means appropriate treatment, services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

(8) "Active practice of chiropractic" means engaging in chiropractic treatment of patients on an average of at least eighteen (18) hours per week and deriving more than fifty (50) percent of chiropractic income from the treatment of patients as opposed to the performing of evaluation of chiropractic records or patients of other chiropractors for the purpose of utilization review or independent evaluation.

Section 2. Requirements for Licensure and Registration. Persons performing chiropractic peer review shall:

(1) Hold a current license to practice chiropractic within the Commonwealth of Kentucky; and

(2) Have been engaged in the active practice of the chiropractic profession for a period of at least five (5) years; and

(3) Hold a certificate from a chiropractic college accredited in accordance with KRS 312.085(1), which certificate shall provide evidence of satisfactory completion of a course in independent evaluation; and

(4) Have completed, by June 1, 1993, and, thereafter annually complete, by June 1 of each year, a course consisting of a minimum of twelve (12) hours, approved by the board, on the subject of utilization review; and

(5) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the licensing and registration requirements set out hereinabove; and

(b) Paying a registration fee of fifty (50) dollars.

DR. HAROLD BYERS, President
APPROVED BY AGENCY: October 6, 1992
FILED WITH LRC: October 8, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this proposed regulation shall be held on the 23rd day of November, 1992, at the hour of 10 a.m., EST, in Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494. Persons desiring to be heard shall notify the Kentucky State Board of Chiropractic Examiners in writing at least five days before the scheduled date of the hearing. Send notification to: Conley C. Congleton, Assistant Attorney General, Office of the Attorney General, Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley C. Congleton

(1) Type and number of entities affected: Chiropractors licensed in Kentucky who have actively practiced for at least 5 years and who desire to perform peer review - number unknown as to how many of the approximately 500 chiropractors licensed in Kentucky have practiced at least 5 years.

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

1. First year: Approximately $250 costs.
2. Continuing costs or savings: Same per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Varying cost of 12 hours of annual education in utilization review.

(b) Reporting and paperwork requirements: Applying to board for annual registration - minimal.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings: N/A

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Registering those who qualify and apply - minimal.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: Allowing unqualified people to perform peer review.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. All chiropractors licensed in Kentucky and who have actively practiced for at least 5 years have right to qualify and register with board.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners

201 KAR 21:100. Minimum standards for recordkeeping/ itemized statements.

RELATES TO: KRS 312.019(9)(j)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019
NECESSITY AND FUNCTION: KRS 312.019(9)(j) authorizes the board to adopt administrative regulations to establish minimum standards for recordkeeping and issuance of itemized statements. This administrative regulation establishes these standards.

Section 1. Office Visits - Recordkeeping. (1) The patient's records shall include the history, exams, re-exams, diagnosis, update diagnosis, and standing orders or plan of care (updated as needed or at re-exam); and this information shall be legibly recorded in the

patient's record.

(2) Legible documentation, whether electronically generated, computer generated, typewritten or hand written, shall record each visit, and shall include the following:

(a) Date of the visit;

(b) Patient symptoms, comment and interval history, if any;

(c) Procedures performed, if any;

(d) Additional pertinent comments, instructions, or orders; and

(e) The doctor's initials or other designation in a multidoctor facility.

Section 2. Itemized Statements. Requests for itemized statements, including dates, services and fees, shall be honored within three (3) business days.

DR. HAROLD BYERS, President

APPROVED BY AGENCY: October 6, 1992

FILED WITH LRC: October 8, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on the 23rd day of November, 1992, at the hour of 10 a.m., EST, in Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494. Persons desiring to be heard shall notify the Kentucky State Board of Chiropractic Examiners in writing at least five days before the scheduled date of the hearing. Send notification to: Conley C. Congleton, Assistant Attorney General, Office of the Attorney General, Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley C. Congleton

(1) Type and number of entities affected: Chiropractors - approximately 500 are licensed in Kentucky.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: 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: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. This regulation applies uniformly to all chiropractors licensed and practicing in Kentucky.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:015. Fees.

RELATES TO: KRS 314A.110, 314A.220

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: This regulation is necessitated by KRS 314A.205(6) and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of respiratory care applications:

(1) The application fee for mandatory certification shall be fifty (50) dollars.

(2) The application fee for temporary mandatory certification shall be fifty (50) dollars.

(3) The application fee for limited mandatory certification shall be ten (10) dollars.

Section 2. Certification Fees. The following fees shall be paid in connection with all types of respiratory care credentials and in addition to the application fees listed in Section 1 of this administrative regulation.

(1) The mandatory certification fee shall be fifty (50) dollars.

(2) The temporary mandatory certification fee shall be ten (10) dollars.

(3) The limited mandatory certification fee shall be fifteen (15) dollars.

(4) The certification fee to change from temporary mandatory certification to mandatory certification shall be forty (40) dollars.

(5) The certification fee to change from limited mandatory certification to temporary mandatory certification shall be thirty-five (35) dollars.

(6) The certification fee to change from limited mandatory certification to mandatory certification shall be seventy-five (75) dollars.

(7) The certification fee to change from having held both limited mandatory certification and temporary mandatory certification to mandatory certification shall be forty (40) dollars.

Section 3. Renewal Fees and Penalties. No person holding a mandatory certification shall practice in this state after March 2 of the year in which his certificate is to be renewed unless his certification has been renewed as provided by law and payment of the prescribed fee has been made. All mandatory certificates not renewed by March 2 following the expiration date shall be deemed expired and no person holding an expired certificate shall engage in the practice of respiratory care. The following fees and penalties shall be paid in connection with mandatory certification renewals and penalties:

(1) The renewal fee for mandatory certification shall be fifty (50) dollars.

(2) The renewal fee, including penalty, for the grace period extending from January 31 to March 2 shall be sixty (60) dollars.

(3) The renewal fee for renewal of mandatory certification after March 2 shall be seventy (70) dollars.

(4) The renewal fee for renewal of the inactive mandatory certification shall be ten (10) dollars.

Temporary mandatory certification and limited mandatory certification are not subject to renewal.

JAMES RAVENCRAFT, Chairman

APPROVED BY AGENCY: September 24, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 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 November 18, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There will be approximately 2,000 individuals credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: Each applicant or certificate holder would be paying the appropriate fee.

1. First year: Application, certification, and renewal fees are determined in this regulation.

2. Continuing costs or savings: Application and renewal fees are determined in this regulation.

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. Continuing education forms will accompany renewals.

(2) Effects on the promulgating administrative body: This regulation sets the appropriate fees for the board.

(a) Direct and indirect costs or savings: Renewals should generate an average of $50,000 per year.

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. This is the only source of funding for the board.

(3) Assessment of anticipated effect on state and local revenues: This fee should generate an average of $50,000 annually 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.

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

401 KAR 49:220. Waste tire trust fund loan program.

RELATES TO: KRS 224.43, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834

NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-834 requires the cabinet to establish the loan fund to make low interest loans available to private interests. Pursuant to KRS 224.43-010 it is the policy of the cabinet to encourage a regional approach to solid waste management. This regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Any person regularly engaged in a recycling or recovered material processing business, or if entering the field has made prior arrangements in the form of written commitments for supplies, equipment and personnel, or a facility permitted by the cabinet for incineration of waste tires for the recovery of energy may apply for financial assistance from the waste tire trust fund for any project that meets the criteria listed in KRS 224.50-834.

(2) The applicant shall possess the legal authority to construct or acquire, operate, and maintain the project for which loan assistance is sought from the waste tire trust fund.

(3) The applicant shall possess the legal authority to incur a pledge to repay any loan assistance.

(4) The project shall comply with goals and objectives of KRS 224.50-824 and 224.50-834.

(5) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(6) The applicant shall assure continued operation and maintenance of the project.

(7) The proposed source of revenue shall be sufficient to operate and repay any debt financing associated with the project.

(8) The applicant shall have approval by resolution from the local governing body as to its consistency with the approved area solid waste management plan.

(9) The applicant nor any of its key personnel nor any third party operator shall:

(a) Intentionally misrepresent or conceal any material fact in the application;

(b) Obtain or attempt to obtain the loan by misrepresentation or concealment;

(c) Have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; and

(d) Been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0042, entitled "Waste Tire Trust Fund Application for Loan Assistance" (October 1992) and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on the effective date of this regulation. The cabinet shall accept applications until COB June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program. These subsequent cycles shall be advertised in public notices, which shall be published in major newspapers with statewide circulation and distributed to all political subdivisions as well as other parties who have notified the division of an interest in submitting an application.

(3) The application shall be properly completed and accurate.

Section 3. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system that measures the degree to which the proposed project:

(a) Promotes reuse and recycling efforts of waste tires or waste tire material, and eliminates existing and prevents future waste tire piles;

(b) Satisfies the identified needs of the project service area;

(c) Efficiently serves the area geographically and by population;

(d) Is needed within the proposed service area;

(e) Is a regional project; and

(f) Is financially sound. The financial review shall be conducted to consider, but not be limited to, the following:

1. Appropriateness of the type of revenues pledged for repayment of a loan and operation and maintenance cost of the project;

2. Validity of the assumptions used to project any revenues pledged to the project;

3. Assurance that revenues pledged to the project will be collected;

4. Security of all other sources proposed to fund the project costs;

5. Credit history of the applicant;

6. Reasonableness of the projections for operation and maintenance cost of the project; and

7. Any legal restrictions on the applicant to pledge the proposed revenues for repayment of a loan from the waste tire trust fund or operation and maintenance of the project.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a loan agreement with the cabinet that sets forth the terms and conditions for completion of the project, and actions thereafter. This shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the loan agreement is executed.

(2) All recipients of loans from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0042A, entitled "Waste Tire Trust Fund Loan Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m. Monday through Friday.

(3) The applicant shall be responsible for the repayment of any loan, and for the continued operation and maintenance of any facility or other project funded by the cabinet. If the project is to be operated, maintained or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment. Five (5) percent of the funds committed shall be reserved for this purpose until the funded projects are completed.

(5) Funds shall be released to the applicant on a monthly basis, for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project, funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) The applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility or until the final repayment of the loan, whichever is shorter.

(8) Any proposed change in the project or in the information provided in the original application, shall require prior approval of the cabinet. The cabinet may require approval by the local governing body.

(9) The interest rate shall be established in the loan agreement and shall be based on the index rate at the time of the loan less two (2) percent. The index rate is the average of the Bond Buyer's Index of twenty (20) G. O. Bonds as published weekly in the Bond Buyer (a financial newspaper circulated in New York) calculated based on the weeks following within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(10) Interest shall be payable to the cabinet semiannually beginning with the next successive interest payment date established in the loan agreement after the applicant receives funds.

(11) Principal shall be payable to the cabinet semiannually beginning with the next successive principal payment date established in the executed loan agreement. The total term of principal repayment shall not exceed thirty (30) years, or the useful life of the facilities and equipment financed, whichever comes first.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 30, 1992 at 10 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below by November 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person wishing 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 to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 30, 1992.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed regulation establishes terms and conditions applicable to the loan program of the waste tire trust fund. It will affect certain recycling facilities, recovered material processing facilities, and incinerators using tire-derived fuel by making low interest loans available for eligible projects as set forth at KRS 224.50-834. Approximately $300,000 is currently available from the fund for eligible projects.

(a) Direct and indirect costs or savings to those affected: Persons meeting eligibility criteria will be able to submit applications to fund projects with low interest loans from the waste tire trust fund. Applications must be submitted by June 30, 1993. The cabinet will prioritize the projects, and commit funds based on this prioritization. Approximately $300,000 is currently available from the fund. As the fund is replenished through loan repayment and accrual of the tire fees set forth at KRS 224.50-822, subsequent application cycles will be established. Loans will be established at a rate of two (2) percentage points below the average rate of the Bond Buyers Index of G.O. Bonds.

1. First year: There will be some costs incurred in preparing applications to take advantage of the low interest loans.

2. Continuing costs or savings: Loan repayment will not exceed 30 years. The first application cycle will extend through June 30, 1993. Subsequent cycles will be established based on the level of funds in the waste tire trust fund.

3. Additional factors increasing or decreasing costs (note any effects upon competition); There are no additional factors increasing

or decreasing costs.

(b) Reporting and paperwork requirements: Local governing bodies will be required to determine if proposed projects are consistent with area solid waste management plans. Any person seeking a loan form the waste tire trust fund will be required to submit an application to the Division of Waste Management. Recipients of a loan from the waste tire trust fund will be required to submit quarterly reports to the Division of Waste Management. Loan recipients will also be required to periodically apply to the cabinet to request payment from the loan.

(2) Effects on the promulgating administrative body: There will be additional costs imposed on the cabinet. These costs include additional direct and indirect expenses for providing resources to review and prioritize loan applications, distribute payments to recipients of loans, monitor the projects, and prepare and maintain the necessary accounting and program records and reports.

(a) Direct and indirect costs or savings:

1. First year: Division costs will depend on the number of applications received, the number of loans approved, and the complexity of the projects. However, the cabinet anticipates program implementation will require at least $7,250 in direct costs and $2,900 in indirect costs annually. Additional personnel may also be needed in the near future to implement the program.

2. Continuing costs or savings: As more projects are approved for funding, the workload will steadily increase.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will review and prioritize applications, execute loan agreements, maintain project records, track accounts, and monitor project implementation. There will be paperwork associated with each of these duties.

(3) Assessment of anticipated effect on state and local revenues: Local governing bodies will be required to determine if the proposed project is consistent with the area solid waste management plan. There should not be any increased burden on local or state revenues because of this activity. Local governments will also benefit financially from new industry the loans bring into the community.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of state law, there were no alternative means of implementing the waste tire trust fund loan program than the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute or administrative regulation which conflicts, duplicates, or overlaps with this proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(6) Any additional information or comments: The purpose of this proposed administrative regulation is to prescribe guidelines for applications for loan assistance from the waste tire trust fund.

TIERING: Was tiering applied? No. Tiering was not applied. Distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal treatment for public funds.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal statute or regulation mandating loans for waste tire programs.

2. State compliance standards: Not applicable.

3. Minimum or uniform standards contained in the federal mandate: Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 of division of local government this administrative regulation will affect. Governing bodies for solid waste management plans.

3. State the aspect or service of local government to which this administrative regulation relates. Local governing bodies will be required to determine if a proposed project is consistent with the area solid waste management plan.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local governing 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 (+/-): It is anticipated that revenues will increase by the location of additional businesses to use or produce waste tire materials.

Expenditures (+/-): Expenditures on the part of local governments should be minimal in that the responsibilities of the local government to comply with the goals and objectives of the area solid waste management plan should already be a factor in the budget.

Other Explanation: It is anticipated that local governments will support this proposed administrative regulation in that it will provide additional resources to assist with their responsibilities for elimination and controlling illegal waste tire piles.

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

401 KAR 49:230. Waste tire trust fund grant program.

RELATES TO: KRS 224.43, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834

NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-828 allows the cabinet to enter into agreements for the removal of existing waste tire piles, or for the removal of waste tires collected by the local government through a local community sponsored program. KRS 224.43-340 requires each county to be responsible for implementing the solid waste management plan which is required to include an inventory and description of all existing solid waste management facilities and activities, and identification and assessment of current and future solid waste management problems faced by the area. For this reason, grants should be awarded to the cities, counties, or urban-county governments to be used to implement a waste tire removal and control program pursuant to KRS 224.50-824 and 224.50-828. Pursuant to KRS 224.43-010, it is the policy of the cabinet to encourage a regional approach to solid waste management. This regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Eligible applicants for financial assistance from the waste tire trust fund grant program shall be any city, county or urban-county government.

(2) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(3) The applicant shall have an approved area solid waste management plan or be a part of an approved area solid waste management plan.

(4) The application shall be properly completed and accurate.

(5) If the project is to be performed by someone other than the applicant, that person shall not have been convicted by final judgement of any felony within five (5) years preceding the filing of the application; or been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

(6)(a) No more than seventy-five (75) percent of the cost of a project may be funded by a grant from the waste tire trust fund.

(b) Each applicant shall provide other funding equal to at least twenty-five (25) percent of the cost of a project which may consist of a local contribution, funds derived from grants or loans from other sources, or in-kind services, if the value of such services or property can be documented to the cabinet's satisfaction.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0043, entitled "Waste Tire Trust Fund Application for Grant Assistance" (October 1992) and its requirements are hereby incorporated by reference. Application forms may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. through 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on the effective date of this regulation. The cabinet shall accept applications until COB on June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program. These subsequent cycles shall be advertised in public notice, which shall be published in major newspapers with statewide circulation and distributed to all political subdivisions as well as any other parties that have notified the division of an interest in submitting an application.

Section 3. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system which measures the degree to which the proposed project:

(a) Addresses a significant environmental hazard;

(b) Assists owners of less than 500 waste tires with the cost of removal;

(c) Promotes reuse and recycling efforts of waste tires or waste tire materials;

(d) Complies with the goals and objectives of KRS 224.50-824 through 224.50-832;

(e) Efficiently serves the area geographically and by population;

(f) Is consistent with the objectives of the approved area solid waste management plan;

(g) Is needed within the proposed service area;

(h) Complies with the implementation schedule set forth in the area solid waste management plan;

(i) Is a regional project; and

(j) Is financially viable. The financial review shall consider, but not be limited to the following:

1. Validity of the assumptions used to project any revenues pledged to the project;

2. Assurance that revenues pledged to the project will be collected;

3. Security of all other sources proposed to fund the project costs; and

4. Reasonableness of the projections for operation and maintenance cost of the project.

(2) Projects that are proposed with the greatest percentage of matching funds shall receive a higher priority after the review of criteria in subsection (1) of this section.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a grant agreement with the cabinet that sets forth the terms and conditions for completion of the project and actions thereafter. The grant agreement shall include a pledge by the grant recipient to use revenues generated by the project to further the project or to support other activities consistent with the approved area solid waste management plan. No monies shall be released to the applicant until the grant agreement is executed.

(2) All recipients of grants from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0043A entitled, "Waste Tire Trust Fund Grant Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The applicant shall be responsible for the continued operation and maintenance of any facility or other project funded by the cabinet if applicable. If the project is to be operated, maintained, or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment.

(5) Funds shall be released to the applicant on a monthly basis for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) If applicable, the applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 30, 1992 at 10 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below by November 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person wishing 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 to Mr. Hale. Written comments

must be received by Mr. Hale no later than 4:30 p.m. on November 30, 1992.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed regulation establishes terms and conditions applicable to the grant program of the waste tire trust fund. It will affect certain city, county, and urban-county governments in the removal and processing of waste tires under the program set forth at KRS 224.50-828. Approximately $600,000 is currently available from the fund for eligible projects. Applicants must provide matching funds for the project as set forth in the proposed regulation.

(a) Direct and indirect costs or savings to those affected: City, county, and urban-county governments with approved solid waste management plans will be able to submit applications to fund projects under the waste tire trust fund. Applications must be submitted by June 30, 1993. The cabinet will prioritize the projects and commit funds based on this prioritization. Approximately $600,000 is currently available from the fund. As the fund is replenished through accrual of the tire fees set forth at KRS 224.50-822, subsequent application cycles will be established.

1. First year: There will be some costs incurred in preparing grant applications.

2. Continuing costs or savings: The first application cycle will extend through June 30, 1993. Subsequent cycles will be established based on the level of funds available in the waste tire trust fund.

3. Additional factors increasing or decreasing costs (note any effects upon competition); There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Recipients of a grant will be required to submit quarterly reports to the Division of Waste Management. Grant recipients will also be required to periodically apply to the cabinet to request payment from the grant.

(2) Effects on the promulgating administrative body: There will be additional costs imposed on the cabinet. These costs include additional direct and indirect expenses for providing resources to review and approve grant applications, distribute payments to recipients of grants, monitor the project, and prepare and maintain the necessary accounting and program records and reports.

(a) Direct and indirect costs or savings:

1. First year: Division costs will depend on the number of applications received, the number of grants approved, and the complexity of the project. However, the cabinet anticipates program implementation will require at least $21,750 in direct costs and $8,700 in indirect costs annually. Additionally personnel may also be needed in the near future to implement the program.

2. Continuing costs or savings: As more projects are approved for funding, the workload will steadily increase.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will review and prioritize applications, execute grant agreements, maintain project records, track accounts, and monitor project implementation. There will be paperwork associated with each of these duties.

(3) Assessment of anticipated effect on state and local revenues: Cities, counties, and urban-county governments will be able to apply for grants from the waste tire trust fund for the removal and processing of waste tires.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of state law, there were no alternative means of implementing the waste tire trust fund grant program other than the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute or administrative regulation which conflicts, duplicates, or overlaps with this proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute or administrative regulation in conflict with this proposed administrative regulation.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no other statute or administrative regulation in conflict with this proposed administrative regulation.

(6) Any additional information or comments: The purpose of this proposed administrative regulation is to prescribe guidelines for applications for grant assistance from the waste tire trust fund.

TIERING: Was tiering applied? No. Tiering was not applied. Distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal treatment for public funds.

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. Cities, counties, and urban-county governments with approved solid waste management plans are eligible for grants from the waste tire trust fund.

3. State the aspect or service of local government to which this administrative regulation relates. Cities, counties, and urban-county governments with approved solid waste management plans are eligible for grants from the waste tire trust fund.

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 (+/-): This proposed administrative regulation will enable the distribution of grant monies to be used by local governments who are interested in pursuing projects to clean-up illegal waste tire piles.

Expenditures (+/-): The cost of preparing an application for grant assistance from the waste tire trust fund should be minimal and should not outweigh the benefit of receiving funds to assist with local responsibilities to eliminate and control illegal waste tire piles.

Other Explanation: This proposed administrative regulation will provide additional resources for cities, counties, and urban-county governments to assist with their responsibilities for eliminating and controlling waste tire piles.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:430. Standards of performance for industrial-commercial-institutional steam generating units.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Db, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from new steam generating units. Delegation of implemen-

tation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from industrial, commercial, and institutional steam generating units is governed by 40 CFR 60, Subpart Db, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for all fossil and nonfossil fuel-fired steam generators used in industrial, commercial, and institutional applications, 40 CFR 60, Subpart Db. The federal NSPS regulation applies to all new steam generating units that commenced construction, modification, or reconstruction after June 19, 1984, and that have a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour). Additionally, the nitrogen oxides (NO_x) and/or particulate matter (PM) standards apply to facilities constructed between June 19, 1984 and June 19, 1986: coal-fired and oil-fired steam generating units having a heat input capacity between 29 and 73 MW (100 and 250 million Btu/hour); coal-fired and oil-fired steam generating units meeting the applicability requirements under Subpart D having a heat input capacity greater than 73 MW (250 million Btu/hour); steam generating units meeting the applicability requirements under Subpart E; and steam generating units meeting the applicability requirements under Subpart J. Those entities most likely to be subject to this federal NSPS regulation are manufacturers of wood furniture, producers of sawmill lumber, plywood paneling, and paper and allied products; automobile, chemical, and iron and steel manufacturers; liquor distillers, petroleum refining, rubber reclaiming, and vegetable and fruit canning. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart Db.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 51 FR 42771 (November 25, 1986) and 52 FR 47833 (December 16, 1987.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.49b.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart Db, so that

Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? Yes. This federal NSPS regulation applies to sources that have a heat input capacity of greater than 29 MW (100 million Btu/hour) that commenced construction, modification, or reconstruction after June 19, 1984. It also applies to sources that commenced construction, modification, or reconstruction between June 19, 1984 and June 19, 1986 meeting applicability requirements under Subpart D, Subpart E, and Subpart J, respectively. Sources which meet the applicability requirements under Subpart D are not subject to this administrative regulation.

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart Db, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR 60, Subpart Db and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for sulfur dioxide (SO_2) is found at 40 CFR 60.42b. The standard for particulate matter (PM) is found at 40 CFR 60.43b. The standard for nitrogen oxides (NO_x) is found at 40 CFR 60.44b.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:460. Standards of performance for sulfuric acid plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120., 40 CFR Part 60, Subpart H, 42 USC 7401 et seq.

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:036 which provides for the control of emissions from new sulfuric acid manufacturing plants. 401 KAR 59:036 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1.The standards of performance for new sulfuric acid manufacturing plants is governed by 40 CFR 60, Subpart H, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction or modification after August 17, 1971.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:036, New sulfuric acid manufacturing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall,

Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for suifuric acid plants, 40 CFR 60, Subpart H. The federal NSPS regulation applies to each sulfuric acid production unit that commences construction or modification after August 17, 1971. An affected facility is one that produces sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. It does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart H.

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

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 46241 (October 6, 1975), and the federal final rulemaking for this source category at 54 FR 6666 (February 14, 1989.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits and comply with cabinet reporting and recordkeeping requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart H, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This federal NSPS regulation applies to each sulfuric acid production unit that commenced construction or modification after August 17, 1971. A facility affected by this subpart is any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. The federal NSPS regulation does not apply to the facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart H, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart H and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for sulfur dioxide is found at 40 CFR 60.82. The standard for acid mist is found at §60.83.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation or if more stringent emissions controls are required by the state's PSD and NSR administrative regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed unless for the reasons

given in (4) above.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:635. Standards of performance for the graphic arts industry: publication rotogravure printing.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart QQ, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:213 which provides for the control of emissions from new publication rotogravure printing operations in the graphic arts industry. 401 KAR 59:213 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic compound (VOC) emissions from new publication rotogravure printing presses is governed by 40 CFR 60, Subpart QQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after October 28,1980.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:213, New publication rotogravure printing operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for publication rotogravure printing presses, 40 CFR 60, Subpart QQ. The federal NSPS regulation applies to all stationary sources that commenced construction, modification, or reconstruction after October 28, 1980. Those entities subject to this federal NSPS regulation are all rotogravure printing units capable of printing simultaneously on the same continuous web or substrate which print salable products. These presses typically consist of eight to twelve printing units and are used to print magazines, catalogues, newspaper supplements, periodicals, directories, direct mail, and display and miscellaneous advertisements. Proof presses are not subject to this federal NSPS regulation. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart QQ.

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

1. First year: Cost information provided with the federal NSPS regulation indicates that there would be increased capital investment costs associated with the promulgated standards for the entire industry. However, the solvent recovery method would provide a net profit (negative annualized costs) and positive return on investments. The two percent incremental increase in initial capital costs would not restrict industry growth, and there would be no significant price increases for publication rotogravure products.

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation at 47 FR 50645 (November 8, 1982.)

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The monitoring and recordkeeping requirements appear at 40 CFR 60.434.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so

that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart QQ, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This administrative regulation applies to all sources that commenced construction, modification, or reconstruction after October 28, 1980. It does not apply to proof presses.

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_

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart QQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR 60, Subpart QQ and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compounds (VOC's) is found at 40 CFR 60.432. The standards will allow no more than sixteen percent of the total mass of volatile organic compound (VOC) solvent and water used at each facility during any one performance averaging period to be emitted.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:675. Standards of performance for new residential wood heaters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart AAA, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from the manufacture of new residential wood heaters. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from the manufacture of new residential wood heaters is governed by 40 CFR 60 Subpart AAA, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each wood heater manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10

a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for new residential wood heaters, 40 CFR 60, Subpart AAA. The federal NSPS regulation applies to residential wood heaters manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990. Those entities most likely to be subject to this federal NSPS regulation are manufacturers of enclosed, wood-burning appliances capable of and intended for space heating and includes pellet burners and kit stoves. Furnaces, boilers, cookstoves, and open fireplaces are not subject to this federal NSPS regulation. Additionally, the provisions of this subpart do not apply to wood heaters constructed prior to July 1, 1988, that are or have been owned by a noncommercial owner for his personal use. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart AAA.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 53 FR 5862 (February 26, 1988.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.537.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart AAA, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? Yes. This federal NSPS regulation applies to new residential wood heaters manufactured on or after July 1, 1988 or sold at retail on or before July 1, 1990. Those units manufactured before July 1, 1988 are not subject to this federal NSPS regulation.

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart AAA, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR 60, Subpart AAA and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) is found at 40 CFR 60.532.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:705. Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart III, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) which utilizes the air oxidation unit processes. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) using the air oxidation unit processes is governed by 40 CFR 60, Subpart III, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after October 21, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for new, modified,and reconstructed air oxidation facilities within the SOCMI. This includes any reactors that use air as an oxidizing agent to produce one or more of the chemicals listed in 40 CFR 60.617. The affected facility is designated as a single air oxidation reactor with its own individual recovery system (if any) or the combination of two or more air oxidation reactors and the common recovery system they share. Construction, reconstruction, or modification of the facility must have begun after October 21, 1983, for the standard to be applicable. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart III.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 26919 (June 29, 1990.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.615.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy

which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart III, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This federal NSPS regulation limits the coverage of the standards to air oxidation processes that are used to produce any of the chemicals listed at 40 CFR 60.617.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart III, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart III and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards are found at 40 CFR 60.612.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS reguiation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:725. Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart NNN, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) which utilizes distillation operations. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations is governed by 40 CFR 60, Subpart NNN, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after December 30, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for distillation unit operations within the SOCMI that produces any of the chemicals listed in 40 CFR 60.667, and that commences construction, modification, or reconstruction after December 30, 1983. These facilities include the following: each distillation unit not discharging its vent stream into a recovery system; each distillation unit/recovery system combination; and two or more distillation/recovery system combinations. The following are exempted from these provisions with certain exceptions found at 40 CFR 60.660: any distillation unit which produces no VOC, produces coal tar or beverage alcohols; any distillation unit subject to Subpart DDD; any distillation unit designed and operated as a batch operation; each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 (exceptions apply); each affected facility with a total design capacity for all chemicals produced of less than one gigagram per year (exceptions apply); each affected facility operated with a vent stream flow rate less than 0.008 scm/min (exceptions apply.) This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S.

EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart NNN.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 26933 (June 29, 1990.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.665.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be abie to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart NNN, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This federal NSPS regulation limits the coverage of the standards to distillation unit operations that are used to produce any of the chemicals listed at 40 CFR 60.667.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart NNN, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart NNN and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards are found at 40 CFR 60.662.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:740. Standards of performance for VOC emissions from petroleum refinery wastewater systems.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart QQQ, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of VOC emissions from petroleum refinery wastewater systems. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for VOC emissions from petroleum refinery wastewater systems is governed by 40 CFR 60, Subpart QQQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to affected facilities located in petroleum refineries that commences construction, modification, or reconstruction after May 4, 1987.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for affected facilities located in petroleum refinery wastewater systems, 40 CFR 60, Subpart QQQ. The federal NSPS regulation applies to all affected sources that commenced construction, modification, or reconstruction after May 4, 1987. The following are considered separate affected facilities: individual drain systems; oil-water separators; and aggregate facilities. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart QQQ.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 53 FR 47619 (November 23, 1988.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.697 and §60.698.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart QQQ, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This federal NSPS regulation applies to all affected facilities located in petroleum refinery wastewater systems including individual drain systems, oil-water separators, and aggregate facilities that commenced construction, modification, or reconstruction after May 4, 1987.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart QQQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart QQQ and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. General standards are found at 40 CFR 60.692-1. Standards for individual drain systems are found at § 60.692-2. Standards for oil-water separators are found at § 60.692-3. Standards for aggregate facilities are found at § 60.692-4. Standards for closed vent systems and control devices are found at §60.692-5. Standards for delay of repair are found at § 60.692-6. Standards for delay of compliance are found at § 60.692-7. Alternative standards for affected facilities are found at 40 CFR 60.693-1 and §60.693-2.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:745. Standards of performance for new magnetic tape coating facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart SSS, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from magnetic tape coating facilities. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from magnetic tape coating facilities is governed by 40 CFR 60, Subpart SSS, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after January 22, 1986.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for the industrial paper coating source category including coating of foil and plastic film, 40 CFR 60, Subpart SSS. Affected facilities include each coating operation and each piece of coating mix preparation equipment that commences construction, modification, or reconstruction after January 22, 1986. Any new coating operation that utilizes less than 38 m^3 of solvent or any modified or reconstructed coating operation that utilizes less than 370 m^3 of solvent for the manufacture of magnetic tape per calendar year is subject only to the requirements of 40 CFR 60.714(a), §60.717(b), and §60.717(c). If these amounts are equaled or exceeded in any calendar year, the facility is subject to §60.712 and all other sections of this subpart. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart SSS.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 53 FR 38899 (October 3, 1988.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because all sources in Kentucky will be subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.717.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administra-

tive regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart SSS, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? Yes. This federal NSPS regulation applies to all affected facilities within the industrial paper coating source category including coating of foil and plastic film. Subject only to the requirements of 40 CFR 60.714(a), §60.717(b), and c) is any new coating operation that utilizes less than 38 m^3 of solvent or any modified or reconstructed coating operation that utilizes less than 370 m^3 of solvent for the manufacture of magnetic tape per calendar year. If the amount of solvent equals or exceeds these amounts in any calendar year, the facility shall be subject to § 60.712 and all other sections of this subpart. Exempted from the standards are solvent storage tanks in this source category.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart SSS, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart SSS and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards are expressed as a percent reduction in VOC's for this source category. They are found at 40 CFR 60.712.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:750. Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart TTT, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from industrial facilities which surface coat plastic parts for business machines. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from industrial facilities which surface coat plastic parts for business machines is governed by 40 CFR 60, Subpart TTT, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after January 8, 1986.

Section 3. Availability of information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal new source performance standards (NSPS) for industrial surface coating of plastic parts for business machines, 40 CFR 60, Subpart TTT. The federal NSPS regulation applies to all stationary sources that commenced construction, modification, or reconstruction after January 8, 1986. An affected facility is each spray booth in which plastic parts for use in the manufacture of business machines such as typewriters, computers, display terminals, printers, photocopiers, and telephones receive prime coats, color coats, or texture and touch-up coats. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart TTT.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 53 FR 2673 (January 29, 1988.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.724.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart TTT, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? No. This federal NSPS regulation applies to all affected facilities within the industrial surface coating source category that commenced construction, modification, or reconstruction after January 8, 1986.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart TTT, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart TTT and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards are expressed as kg VOC/l and are found at 40 CFR 60.722.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:755. Standards of performance for polymeric coating of supporting substrates facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart VVV, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from polymeric coating of supporting substrates facilities. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under USC 7411(c)(1).

Section 1. The standards of performance for emissions from polymeric coating of supporting substrates facilities is governed by 40 CFR 60, Subpart VVV, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after April 30, 1987.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling

Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on November 25, 1992, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback

(1) Type and number of entities affected: This administrative regulation adopts without change the federal new source performance standards (NSPS) for polymeric coating of supporting substrates facilities, 40 CFR 60, Subpart VVV. The federal NSPS regulation applies to all affected facilities that commenced construction, modification, or reconstruction after April 30, 1987. An affected facility is each coating operating and any on-site coating mix preparation equipment. Any affected facility for which the amount of VOC used is 95 Mg or greater per twelve-month period is subject to all the requirements of this subpart. Any affected facility for which the amount of VOC used is less than 95 Mg per twelve-month period is subject only to the requirements of 40 CFR 60.744(b), §60.747(b), and §60.747(c). Those entities most likely to be subject to this federal NSPS regulation are industries which surface coat woven, knit, or nonwoven textiles, fiberglass, leather, yarn, and cord. Examples of polymeric coatings are natural and synthetic rubber, urethane, polyvinyl chloride, acrylic, epoxy, silicone, phenolic, and nitrocellulose. This federal NSPS regulation does not apply to the following: coating mix preparation equipment used to manufacture coatings at one plant for shipment to another plant or for sale to another company for use in an affected facility (coating operation); coating mix preparation equipment or coating operations during those times they are used to prepare or apply waterborne coatings so long as the VOC content does not exceed 9 percent by weight; web coating operations that print an image on the surface or any coating applied on the same printing line that applies the image. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provision of the federal NSPS regulation, 40 CFR 60, Subpart VVV.

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

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 37538 (September 11, 1989.)

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.747.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart VVV, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? Yes. Multiple standards exist for this source category. There are two distinct emission sources at a polymeric coating plant: coating mix preparation equipment and the coating operation. The technologies used to control VOC emissions and control efficiencies are different for each emission source. This federal NSPS regulation applies to all affected facilities within this source category that commenced construction, modification, or reconstruction after April 30, 1987. Any affected facility for which the amount of VOC used is 95 Mg or greater per twelve-month period is subject to all the requirements of this subpart. Any affected facility for which the amount of VOC used is less than 95 Mg per twelve-month period is subject only to the requirements of 40 CFR 60.744(b), §60.747(b), and §60.747(c). The federal NSPS regulation does not apply to the following: coating mix preparation equipment used to manufacture coatings at one plant for shipment to another plant or for sale to another company for use in an affected facility (coating operation); coating mix preparation equipment or coating operations during those times they are used to prepare or apply waterborne coatings so long as the VOC content does not exceed 9 percent by weight; web coating operations that print an image on the surface or any coating applied on the same printing line that applies the image.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart VVV, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart VVV and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards are expressed as a percent reduction of VOC emissions and are found at 40 CFR 60.742.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

EDUCATION PROFESSIONAL STANDARDS BOARD
Office of Teacher Education and Certification

704 KAR 20:585. Procedures for certificate revocation.

RELATES TO: KRS 161.028, 161.120
STATUTORY AUTHORITY: KRS 161.028
NECESSITY AND FUNCTION: KRS 161.028 and 161.120 provides that the Education Professional Standards Board may suspend or revoke teaching certificates. This regulation identifies the conditions for initiating revocation proceedings and the procedures to be followed during the revocation proceedings, including the rules governing the conduct of the adjudicatory hearing.

Section 1. (1) In addition to those grounds provided in KRS 161.120, an action to revoke or suspend any Kentucky certificate may be initiated by the board upon receipt of one (1) or more of the following:

(a) Report of criminal prosecution for persons who are not employed in a public or private school position but who hold a Kentucky teaching certificate.

(b) Report of certificate revocation or suspension from another state.

(c) Report received from a district superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380.

(d) Report from the chief state school officer or a local board of education of the conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).

(2) Failure to report by the district superintendent as required by KRS 161.120(2)(b) may constitute grounds for revocation of the superintendent's certificate.

Section 2. (1) Upon receiving a report as identified in Section 1 of this administrative regulation or KRS 161.120(2)(b), the board through the office of its executive secretary shall secure available documentation and information and cause an investigation relating to the cause for certificate revocation.

(2) The board, or its designee, shall make the determination that the report does or does not warrant a hearing for certificate revocation. In making this determination, the board or its designee shall take into consideration the conditions outlined in Section 3 of this administrative regulation.

(3) If the board or its designee determines that a hearing is not warranted, written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint.

(4)(a) Statement of charges and notice of hearing. If the board or its designee determines that a hearing is warranted, a written statement specifying in detail the charge(s) against the certificate holder and setting a time and date for the hearing shall be forwarded to the certificate holder by certified mail.

(b) The written statement of charges against the certificate holder shall set forth in ordinary and concise language the act(s) or omission(s) with which the certificate holder is charged to the end that the certificate holder will be able to prepare a defense. The statement shall also notify the certificate holder of the date, time and location of the hearing, and the name and address of the hearing officer if one has been appointed to hear the case. The statement of charge(s) shall include or be accompanied by:

1. A copy of KRS 161.120;

2. 704 KAR 20:585;

3. A statement that a failure to appear at the hearing, in person or by counsel, will constitute a waiver of the right to a hearing and that the hearing officer or full board may proceed upon the charge(s) without a hearing and in the absence of the certificate holder; and

4. A statement that the certificate may be revoked without a hearing upon written agreement by the certificate holder to voluntarily surrender his certificate(s).

(5) Service. The written statement of charges shall be served personally or by certified mail. Service by certified mail shall be effective if a statute or administrative regulation requires the certificate holder to file his address with the board and to notify the board of any change in address, and if a certified letter containing the statement of charge(s) is mailed, addressed to the certificate holder at the latest address on file with the board.

(6) Amendment of charges. At any time before the matter is submitted for final decision, the statement of charge(s) may be amended or supplemented. All parties shall be notified of the filing of an amended or supplemental charge(s). If the amended or supplemental statement of charge(s) presents new charges, the certificate holder shall be afforded a reasonable opportunity not exceeding thirty (30) days to prepare his defense. Any new charges shall be deemed controverted and any objections to the amended or supplemental charges may be made orally and shall be noted in the record.

(7) The hearing shall be conducted by a quorum of the board or by a hearing officer appointed by the board.

(8)(a) If the matter is to be heard by the board, the executive secretary of the board shall determine the date, time and place of the hearing. When hearing officer is appointed to hear the case, the hearing officer shall determine the date, time and place of the hearing. Unless otherwise ordered or agreed, the hearing shall be held at the Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

(b) Notwithstanding paragraph (a) of this subsection, if the matter is to be heard by the hearing officer, the hearing officer may select a different location for the hearing nearer the place where the event complained of occurred. The parties by agreement may select any location within the state for the hearing.

Section 3. Notice Returned or Undeliverable. If the notice of charges and hearing date is returned as undeliverable and the board is otherwise unable to serve the notice of charges and hearing date on the certificate holder, the charges supporting the revocation proceeding shall not be dismissed. The fact of the pending revocation proceeding and the supporting charges shall be noted in the certificate holder's certification record on file with the Office of Teacher Education and Certification and shall be communicated to all

Kentucky school superintendents, to all state directors of teacher education and certification and to the NASDTEC-CAA Clearinghouse operated by the National Association of State Directors of Teacher Education and Certification.

Section 4. Continuances. (1) A certificate holder may request a continuance of the scheduled revocation hearing for good cause. The request shall be in writing and shall state the reason for the continuance. The request shall be filed with the board, through the office of the executive secretary, at least ten (10) days prior to the scheduled hearing. Copies of the request for continuance shall be mailed to all parties, including the hearing officer appointed by the board, if any.

(2) An objection to a requested continuance shall be filed in writing and shall state the reason for the objection. Any objection shall be filed with the board, through the office of the executive secretary, at least five (5) days prior to the scheduled hearing. Copies of the objection to request for continuance shall be mailed to all parties, including the hearing officer appointed by the board, if any.

(3) A continuance may be granted in extraordinary circumstances.

(4)(a) If the scheduled revocation hearing is to be heard before a hearing officer appointed by the board, the request for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive secretary 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 state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

(b) If the scheduled revocation hearing is to be conducted by the board, the request for continuance shall be ruled on by the executive secretary of the board.

Section 5. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive secretary, and served on all parties, including the hearing officer appointed by the board, if any.

(2) An interim order by the hearing officer shall be executed and transmitted by the executive secretary to all parties. Interim orders are not reviewable by the board except on final review.

(3) If a certificate holder retains counsel to represent him at the revocation hearing, the attorney shall file a written entry of appearance. All future notices, correspondence and orders shall be transmitted to that attorney and all future filings, motions or requests shall be submitted by that attorney on behalf of the certificate holder.

(4) A certificate holder shall submit written notice to the board through the office of its executive secretary of any change in address.

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

(6)(a) Subpoena and subpoena duces tecum forms shall be issued at the request of any party by the chief state school officer. Request for the subpoena forms shall be submitted to the executive secretary of the board. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(b) Witnesses appearing pursuant to KRS 161.120(3)(b) shall receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in a civil action. Fees, mileage and expenses shall be paid by the party at whose request the witness is subpoenaed.

(7) Deposition of witnesses.

(a) The testimony of any material witness may be taken by deposition only in extraordinary circumstances and upon written authorization by the hearing officer or by the executive secretary of the board if the full board is scheduled to conduct the hearing.

(b) The party requesting the deposition shall file a written request setting forth the name and address of the witness whose testimony is desired, a showing of the nature and materiality of the testimony, a showing that the witness will be unable or cannot be compelled to attend; and shall request an interim order requiring the witness to appear and to testify by deposition. The cost of the deposition shall be paid by the party requesting the deposition.

(c) The request for deposition shall be filed no less than ten (10) days prior to the hearing. Any objections shall be filed no less than five (5) days prior to the hearing. Copies of the request and any objection shall be mailed to all parties.

(8) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions and/or requests and address any other matter which will facilitate the hearing.

(9) The executive secretary, attorney for the board and board staff may participate in ex parte communications concerning pending and impending proceedings before the board relating to:

(a) Procedural questions; and

(b) Scheduling of hearings.

Section 6. Conduct of Hearing. (1)(a) Unless otherwise authorized by the Education Professional Standards Board, the board shall use the hearing officer to hear cases, to make findings of fact, conclusions of law, and recommendations to the board for a decision. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including prehearing motions. He shall require an orderly and proper decorum at the hearing, shall be authorized to restrict the number of character witness testimony and to set a reasonable time limit on the length of the hearing, and shall be authorized to require compliance with his rulings.

(b)1. If the hearing is to be conducted by the board, the executive secretary shall be authorized to grant or deny all prehearing motions. Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss or similar motions which can be delayed until the time of the hearing.

2. If the full board hears a case, a legal adviser provided by the Office of the Attorney General shall preside at the hearing and advise the board on matters of law. The board itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the legal adviser, including the admission and exclusion of evidence.

(2) A hearing officer or a member of the board shall voluntarily disqualify himself and withdraw from any case in which he cannot afford the certificate holder a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer or a member of the full board by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be afforded. Where the request concerns a board member, the question shall be determined by the other members of the board. Where the request concerns a hearing officer, the question shall be determined by the executive secretary of the board.

(3) Discovery. In addition to the exchange of witness lists, either party is entitled to inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) The written statement of any witness, other than the certificate holder, proposed to be called by a party and of witnesses having personal knowledge of the acts or events which are the basis for the proceeding;

(b) All writings, including but not limited to, reports of mental, physical and blood examinations and other documents proposed to be offered into evidence;

(c) Any other writing or thing which is relevant and which would be admissible in evidence and which is not otherwise exempt from disclosure. A reasonable fee for reimbursement of the actual cost of producing or copying the documents may be charged by the party

from whom the evidence is sought.

(d) For the purpose of this section, "statement" includes written statements by the person signed or otherwise authenticating the writing, stenographic, electrical recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

(4) Evidence.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence. If the certificate holder does not testify in his behalf, he may be called and examined as if under cross-examination.

(c) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. The formal rules of evidence and civil procedure shall not apply. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonably prudent persons rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

(d) If the testimony of any witness has been previously taken under oath or affirmation in a criminal, civil or administrative adjudicatory action and recorded by audio, video or written transcription, subject to cross-examination by the certificate holder, then the recorded testimony of the witness may be presented by either party in lieu of oral testimony. A request to substitute the oral testimony of any witness shall be submitted in writing to the hearing officer, or if the board is to hear the case, to the executive secretary of the board, within ten (10) days of the hearing. The opposing party may file written objections setting the forth in detail the reason for the objection within five (5) days of the hearing.

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

(5) Judicial notice. In reaching a decision, the board may take official notice of cognizable facts which may be judicially noticed by the courts of Kentucky and of any generally accepted technical and scientific matter. Board members may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to the record. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters of evidence by evidence or by written or oral presentation or authority. The board or its hearing officer shall determine the manner by which a party may refute the officially noticed matter.

Section 7. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare within ten (10) days after the case is submitted 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. The recommended order shall be in such form that it may be adopted as the decision in the case.

(2) At the direction of the hearing officer, the recommended order shall be filed with the board through the office of its executive secretary and a copy served by the executive secretary on each party and his or her attorney.

(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 secretary within ten (10) days of the 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. The length of the written exceptions shall be limited to ten (10) pages.

(4) Exceptions 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 decision.

Section 8. Board Review and Final Action. (1)(a) The board may adopt the recommended order of the hearing officer in its entirety, or may increase or reduce the proposed period of revocation or suspension and adopt the balance of the recommended order.

(b) If the recommended order is not adopted by the board as provided in paragraph (a) of this subsection, the board itself may decide the case upon the record, including the transcript, with or without taking additional evidence or may order the case remanded to the hearing officer for further action as appropriate. By stipulation of the parties, the board may decide the case upon the record without including the transcript. If additional evidence is introduced before the board itself, no board member may vote unless the member heard the additional oral evidence.

(c) The board will consider the hearing officer's recommended order at its next regularly scheduled public meeting following the filing of the recommended order.

(2) Following consideration by the board, a final order shall be entered disposing of the revocation matter within five (5) days of the public meeting, unless within that time the board commences proceedings to decide the case upon the record, including the transcript, or without the transcript where the parties have so stipulated.

(3) If the board hears the case, the board shall issue its decision within five (5) days of submission of the case. The order shall be prepared immediately upon final decision by the board, entered and served at the direction of the board by the executive secretary to the board. Copies of the order shall be served on all parties personally or by certified mail by the board through the office of its executive secretary. The final decision of the board shall become effective when the board enters the written final decision.

(4) Form of the decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto.

Section 9. Defaults. If the certificate holder fails to appear at the hearing, the board may take action based upon the respondent's express admissions, or the entry of a guilty plea in a criminal court of law, or upon a finding of guilty by a jury in a criminal court of law, or upon other evidence and affidavits that may be used as evidence without notice to the certificate holder.

Section 10. Revocation or Suspension Upon Voluntary Surrender. (1) The board may revoke or suspend a teaching certificate upon a voluntary surrender of the certificate. The revocation or suspension of the teaching certificate shall be for a defined period of time or for an indefinite period, and may be according to specified terms and conditions best adapted to protect the health, welfare and safety of school children and to rehabilitate and/or educate the certificate holder.

(2) The executive secretary to the board, or designee, is authorized to and may negotiate the terms and conditions of the revocation or suspension upon voluntary surrender.

(3) No revocation or suspension upon voluntary surrender shall be final until approved by the board. The written approval of the boards shall be in the form of a written document setting forth the terms and conditions of the revocation or suspension upon voluntary surrender. The written document shall further state that the certificate

holder agrees that he is ineligible to hold a teaching certificate, that the surrender of the certificate is for cause, shall set forth findings of fact and that the certificate holder has surrendered the certificate voluntarily, knowingly and intelligently. The written document shall be signed by the certificate holder, his attorney, if any, the chairman of the board and the attorney for the board.

Section 11. Reinstatement of Certificate or Reduction of Penalty. (1) Any individual whose certificate has been revoked may file a written petition seeking reissuance of the teaching certificate which shall state the reasons the applicant believes himself to be suitable for reissuance.

(2) The board may schedule a hearing to determine if the applicant is suitable for reissuance of the teaching certificate. The hearing may be held before the board or before a hearing officer appointed by the board. If the petition is heard before a hearing officer, the hearing officer shall submit a written report to the full board stating findings of fact and a recommendation as to whether the certificate shall be reissued.

(3) The burden of proving suitability for reissuance shall rest on the applicant seeking reinstatement.

(4) The board's final decision shall state the reasons therefore, and may include terms and conditions that the board reasonably deems appropriate to impose as a condition of reissuance.

(5) In addition to meeting the requirements of KRS 161.120(5), applicants for reissuance of a revoked certificate must satisfy all current educational requirements for the certificate.

Section 12. Contempt. If any person in revocation proceedings before the board disobeys or refuses any lawful order or refuses to respond to a subpoena or thereafter refuses to be examined, or is guilty of misconduct during the hearing, the board shall certify the facts to the circuit court in and for the county where the proceedings are held. The court shall thereupon issue an order directing the person to appear before the court and to show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on that person. The same proceedings shall be held, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before the circuit court.

Section 13. 704 KAR 20:580, Certificate revocation procedures, is hereby repealed.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 30, 1992, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 25, 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 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. Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: All superintendents, principals, teachers, supervisors, directors of pupil personnel or other administrative, supervisory or instructional employees of school systems who hold certificates or licenses issued under KRS 161.010-161.100.

(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: This regulation defines procedures for filing pleadings and appeals. Upon revocation of a license or certificate, the Education Professional Standards Board notifies the Division of Certification in an order to revoke the license or certificate.

(2) Effects on the promulgating administrative body: The regulation will clarify hearing procedures for revocation of certificates.

(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 (1)(b) above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative to clarifying regulation on hearing procedures.

(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 certificate revocation statute applies equally to all certificated school employees.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:010. Acquisition and disbursement of funds.

RELATES TO: KRS 164A.560, 164A.565

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.560 and 164A.565 at Northern Kentucky University.

Section 1. The Northern Kentucky University Board of Regents elects to perform the financial management functions set forth in KRS 164A.560(2), related to the receipt, deposit, collection, retention, investment, disbursement and accounting of all funds; and KRS 164A.565 related to the installation of an accrual basis accounting system, other records and annual reports.

Section 2. The Northern Kentucky University Board of Regents elects to comply with KRS 164A.560(2)(b) to limit disbursements to the accounts and for the purposes for which the state appropriations, or other monies have been received for through the enacting resolution of the institution's annual operating budget.

Section 3. The Northern Kentucky University Board of Regents shall use an accrual basis accounting system and fund structure that conforms with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with KRS 164A.565(2), (3), (6), (7), and (8).

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(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 provision:

(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.

TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:020. Annual audit.

RELATES TO: KRS 164A.570
STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.570 at Northern Kentucky University.

Section 1. The Northern Kentucky University Board of Regents elects to engage a qualified firm of certified public accountants for the purpose of submitting an independent opinion concerning the internal accounting controls and compliance with the provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620. The engagement of the qualified firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chaptet 164A, there are no new entities which will be affected. The original entity affected was the university.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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 provision:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.

RELATES TO: KRS 164A.575
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.575 at Northern Kentucky University.

Section 1. The Northern Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects to purchase and manage interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with KRS 164A.575(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12).

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.
(a) Direct and Indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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 provision:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:040. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.555 to 164A.630
NECESSITY AND FUNCTION: KRS 164A.560(1) permits the governing board of each public institution of higher education which has elected by regulation to implement the financial management functions authorized by KRS 164A.555 to 164A.630 to delegate those responsibilities by regulation to appropriate officials of the university. This regulation provides for such delegations.

Section 1. The Northern Kentucky University Board of Regents, under the provision of KRS 164A.560, elects to delegate responsibility for the financial management provisions of KRS 164A.560, 164A.565, 164A.575 and 164A.620 to the president of the university. Further, the Board of Regents delegates to the president responsibility for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents.

WILLIAM G. VERST, Chairman

DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.
(a) Direct and Indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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 provision:
(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.
TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:050. Issuance of bonds.

RELATES TO: KRS 164A.605
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.605 at Northern Kentucky University.

Section 1. The Northern Kentucky University Board of Regents, under the provision of KRS 164A.560, elects the authority to issue bonds subject to the conditions as set forth in KRS 164A.605.

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker
(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.
(a) Direct and Indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.
(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 provision:

(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.

TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents

760 KAR 1:060. Fund for excellence.

RELATES TO: KRS 164.410, 164A.620

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY AND FUNCTION: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.620 at Northern Kentucky University.

Section 1. The Northern Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects and authorizes the establishment of a fund for excellence under the conditions and for the purpose as set forth in KRS 164A.620.

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President

APPROVED BY AGENCY: October 13, 1992

FILED WITH LRC: October 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1992 at 9 a.m. at Northern Kentucky University in Room 722, Administrative Center. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 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 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. W. Michael Baker, Assistant Vice President for Business Affairs, Northern Kentucky University, 726 Administrative Center, Highland Heights, Kentucky 40351, (606) 572-5207.

REGULATORY IMPACT ANALYSIS

Agency Contact: W. Michael Baker

(1) Type and number of entities affected: Since the university internally enacted this regulation in 1982 and given that the purpose of this regulation is only to codify the elective provisions of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the university.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(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 provision:

(6) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the university has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the executive branch (Finance and Administration Cabinet) to the university for the purpose of increasing efficiency and accountability.

TIERING: Was tiering applied? No. Tiering was not applied because the university has uniform standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Banking

808 KAR 1:130. Loan production offices.

RELATES TO: KRS 287.820

STATUTORY AUTHORITY: KRS 287.020(1)

NECESSITY AND FUNCTION: KRS 287.820 provides for the operation of a loan production office, or offices, by a bank. This administrative regulation clarifies what banking operations may or may not be conducted at a loan production office.

Section 1. A bank's board of directors may by resolution establish maximum dollar limits on the lending authority of officers located at a loan production office, and if the designated limits are consistent with bank wide limits on lending authority, the department will consider loans made by those officers under such limits to be approved at the principal office for the purpose of KRS 287.820(1)(a). A loan production office officer may therefore accept a loan application and act upon it without further action by the principal office.

Section 2. A bank may maintain a transaction account at the principal office into which funds representing loan proceeds earmarked for loan production office loans are deposited, and a loan production office officer may draw instruments on that account in order to disburse loan proceeds. The department then will consider funds to have been disbursed at the principal office for purposes of KRS 287.820(1)(a) and (b).

Section 3. Loans originated at a loan production office may be closed at that loan production office. No loan payments, whether the loan originated at the loan production office or at a main or branch bank office, or another loan production office may be received at a loan production office.

Section 4. A bank customer may receive information at the loan production office on any lending account which that customer may

have with the bank whether or not the loan was originated at that loan production office.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on November 23, 1992 at 10 a.m. (ET) at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: David H. Ashley, General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: J. Rick Jones
(1) Type and number of entities affected: 231 state chartered banks. By virtue of KRS 287.820 a state-chartered bank may operate a loan production office either inside or outside the county of its principal or main office. KRS 287.820(4) provides, in effect, that loan production offices shall not accept deposits or conduct any other banking functions except the solicitation and origination of loans for final approval and disbursement of funds at the principal or branch office. This regulation clarifies those operations which may be conducted at a loan production office in connection with the origination of loans.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Does not apply.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. This amendment is applicable to all loan production offices in this state.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Thrift Institutions

808 KAR 7:040. Acquisition of savings and loan associations.

RELATES TO: KRS 289.905, 289.910
STATUTORY AUTHORITY: KRS 289.702
NECESSITY AND FUNCTION: KRS 289.905 and 289.910 set forth the statutory procedures which must be followed to acquire control of a Kentucky savings and loan association or a savings and loan association holding company which includes a Kentucky savings and loan association. This administrative regulation is to ensure uniformity in the procedures which apply to such acquisitions.

Section 1. (1) Fifteen (15) percent deposit limitation. The deposit limitation shall be based upon the year-end reports made by the savings and loan associations to their respective supervisory authorities.
(2) Savings and loan association or savings and loan association holding company acquisitions under consideration by the department shall be based upon the latest year-end reports available to the department at the time of the acquisition application.

Section 2. (1) Acquisition period. The twelve (12) month period during which individuals or corporations may not, directly or indirectly, acquire control of more than three (3) Kentucky savings and loan associations shall commence on the date that the individual or corporation acquires the first savings and loan association. An individual or corporation is deemed to have acquired a savings and loan association on the day the transaction is consummated.
(2) Effective July 15, 1993, the limitation on the number of savings and loan association acquisitions is removed, and individuals and corporations may acquire an unlimited number of savings and loan associations so long as the acquisitions do not exceed the fifteen (15) percent deposit limitation.

Section 3. Fees. Each acquisition application shall include a nonrefundable investigation fee of $2,500. This fee shall be paid prior to approval of the application.

Section 4. Filings. An original document and four (4) copies of the acquisition application shall be filed with the commissioner concurrently with the application filed with the applicable federal supervisory authority, and shall be on the same form used by the applicable federal supervisory authority. All subsequent information furnished by the applicant to the applicable federal supervisory authority shall be concurrently filed with the department. The commissioner may require additional information necessary to make a decision on whether or not to approve the acquisition application.

Section 5. Coordination with Federal Agencies. The commissioner shall coordinate the application process for acquisition of a Kentucky savings and loan association or a savings and loan association holding company which controls a Kentucky savings and loan association with the applicable federal regulatory authority to ensure that no unreasonable delays occur in the approval process.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on November 23, 1992 at 10 a.m. (ET) at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: David H. Ashley, General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Ella Robinson
(1) Type and number of entities affected: There are presently only 2 state-chartered savings and loan institutions. KRS 289.905 and 289.910 provide for the acquisition of these state-chartered savings and loan associations by any individual or savings and loan holding company. The purpose of this regulation is to provide additional information beyond that contained in the statutes to ensure uniform procedures by which these savings and loan associations might be acquired in the future.
(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by the amendment; therefore, there

are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There would be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment sets forth the acquisition application requirements. The amendment also provides for a fee of $2,500 payable to the Department of Financial Institutions per acquisition.

(2) Effects on the promulgating administrative body: The affect on the promulgating administrative body would be minimal.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There would be purely minimal reporting and/or paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. The adoption of this amendment applies to all state-chartered savings and loan associations.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions

808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, Small Corporate Offering Registration.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY AND FUNCTION: The Department of Financial Institutions, Division of Securities, has adopted Form U-7, Small Corporate Offering Registration. This proposed regulation sets forth the qualifications, eligibility requirements, and restrictions upon corporations desiring to use Form U-7.

Section 1. Qualification for Use of Form. To be eligible to use Form U-7, a company must comply with each of the following requirements:

(1) The company must be a corporation organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries. "Blind pool" offerings and other offerings for which the specific business or properties cannot now be described are not eligible to use Form U-7.

(2) The securities may be offered and sold only on behalf of the company, and Form U-7 may not be used by any selling security-holder (including purchase underwriters in a firm commitment underwriting) to register his securities for resale.

(3) The offering price for common stock (and the exercise price, if the securities are options, warrants or rights for, and the conversion price if the securities are convertible into, common stock) must be equal to or greater than five (5) dollars per share. By execution of the application and filing of the U-7 in any state, the company thereby agrees with the department that the company will not split its common stock, or declare a stock dividend, for two (2) years after effectiveness of the registration; provided, however, that in connection with a subsequent registered public offering, the company may upon application and consent of the department take such action.

(4) The company may engage selling agents to sell the securities. Commissions, fees, or other renumeration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company believes, and has reason to believe, are appropriately registered in this state.

(5) This form shall not be available for the securities of any company if the company or any of its officers, directors, ten (10) percent stockholders, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the application for registration hereunder;

(b) Has been convicted within five (5) years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities department within five (5) years prior to the filing of the application for registration hereunder or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the application for registration hereunder;

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase, or sale of securities;

(e) Is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree from any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct of practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the application for registration hereunder;

(f) The prohibitions of paragraphs (a) through (c) and (e) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order of judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person qualified under this subsection may act in a capacity other than that for which the person is licensed or registered; and

(g) Any disqualification caused by this section is automatically waived if the state securities department or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied. If any of the circumstances in paragraphs (b), (c) or (e) of this subsection has occurred more than five (5) years from the date of the application for registration hereunder, these circumstances should be described in response to Question 45 as a Miscellaneous Factor.

(6) Use of the form is available to any offering of securities by a

company, the aggregate offering price of which within or outside this state shall not exceed $1,000,000, less the aggregate offering price for all securities sold within the twelve (12) months before the start of, and during the offering of, the securities under SEC Rule 504 in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act. The form is not available to a company that is an investment company (including mutual funds) or is subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934.

(7) The company shall file with the SEC a Form D of Regulation D under the Securities Act of 1933 claiming exemption of the offering from registration under such act pursuant to Rule 504. A copy of the Form D with appropriate state signature pages shall be filed with the department at the same time as filed with the SEC.

Section 2. General Requirements for Use of Form. (1) The Form U-7 when properly filled in, signed and submitted, together with the exhibits scheduled below and a Form U-1, Uniform Application to Register Securities, constitutes an application for registration for the states listed at the bottom of the cover page of the form. There should be filed with each state there listed a signed original of the form, together with an executed Form U-1 and a signed original of the consent to service of process constituting Exhibit 7. Any references in the Form U-1 to SEC registration and effectiveness should be disregarded and Questions 6 and 8(a) of the Form U-1 are inapplicable. The Form U-1 should set forth the amount of securities being registered in that state and the method of calculating the filing fee, and there should be enclosed a check for the amount of the filing fee. Each state must separately declare the registration effective by an order to that effect unless the state has some other procedure applicable to registration on Form U-7. Once registration is effective as to a given state, the effective date should be noted at the bottom of the cover page of the form. Any changed or revised disclosure document must also be signed.

(2) Each question in each paragraph of the form should be responded to. If the question or series of questions is inapplicable, so indicate. Each answer should be clearly and concisely stated and in the space provided; however, notwithstanding the specificity of the questions, responses should not involve nominal, immaterial or insignificant information.

(3) If the provided space is insufficient, additional space should be created by cutting and pasteing the form to add more lines or by putting the form on a word processor and adding more lines in this or a similar manner. Irrespective of which method is used, care should be taken to assure that the form is accurately and completely reproduced, smaller type size should not be used, and script or italic type styles should be avoided.

(4) There must be submitted to the department an opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the company in accordance with their terms.

(5) The disclosure document on Form U-7 constitutes the offering circular or prospectus and the form once filled out, filed and declared effective may be reproduced by the company by copy machine or otherwise for dissemination to potential investors. (The company is cautioned to control the copying and distribution to preclude inaccurate or unreadable copies from being used and to prevent other unauthorized uses for which the company may nevertheless be deemed responsible.) These instructions are not part of the disclosure document and should not be included. Reproduced copies should be on white paper and should be stapled or secured in the left margin without a cover of any type.

(6) The company should expect that the department may have comments and questions concerning the answers set forth on the form and that changes may be required to be made to the answers before the registration is declared effective.

(7) No offers or sales may be made in this state until the registration has been declared effective by the department. To make offers or sales before the registration is effective could lead to a stop order or other proceeding which would preclude use of the form in this or any other state and could give rise to a right of recision by investors enforceable against management, principal stockholders and the selling agents as well as the company. When the registration has been declared effective in this state, offers and sales may be made in this state even though registration in other states has not been declared effective. This disclosure document must be delivered to each investor before the sale is made, e.g.:

(a) Before any order is entered;

(b) Any subscription agreement is signed; or

(c) Any part of the purchase price is received. The registration statement will be effective only for the same time period specified in the order of the department, which may be different for different states; however, no registration statement shall remain effective in a particular state for a period greater than one (1) year.

(8) After the registration has been declared effective, and while the offering is still in progress, if any portion of the form should need to be changed or revised because of a material event concerning the company or the offering to make it accurate and complete, it shall be so changed, revised, or supplemented. If changed, revised, or supplemented (including an addition on the cover page of another state in which the offering has been registered) the form as so changed, revised, or supplemented, clearly marked to show the changes from the previously filed version, should be filed and cleared with the department of this state before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision by an investor, and if the minimum proceeds have not been raised, after filing with a clearance by the department, the disclosure document on this form as so changed, revised, or supplemented should be recirculated to persons in this state that have previously subscribed, and they should be given the opportunity to rescind or reconfirm their investment.

(9) Options, warrants and similar rights to purchase securities constitute a continuous offering of the underlying securities during the exercise period and required the securities to be registered and the disclosure document to be kept continuously current throughout the exercise period through the use of the above amendment procedure or by means of a supplement, as appropriate. Upon any change, revision, or supplement to the disclosure document, a copy must be promptly furnished to the holders of options, warrants and similar rights.

(10) Any and all supplemental literature or advertisements announcing the offering should be filed by the company and cleared with the securities department of each state prior to publication or circulation within that state. An announcement should not be a sales motivation device and should normally contain no more than the following:

(a) The name of the company;

(b) Characterization of the company is indicated on the cover page of the disclosure document;

(c) Address and telephone number of the company;

(d) A brief indication in ten (10) words or less of the company's business or proposed business;

(e) The number and type of securities offered and the offering price per security;

(f) The name, address, and telephone number of any selling agent authorized to sell the securities;

(g) A statement that the announcement does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by official disclosure document;

(h) How a copy of the disclosure document may be obtained; and

(i) The company's corporate logo. Clip and return coupons requesting a copy of the disclosure document are permitted in printed

announcements. (For example, an announcement in "tombstone" format with a black-lined border and using the following language would ordinarily be acceptable: "50,000 shares, common stock; $5 per share; (logo) XYZ Corporation, a development stage database computer software company now conducting operations; Midtown, Ohio; selling agent: ABC Securities, 1234 Main Street, Midtown, Ohio (321) 123-4567. This announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official disclosure document; a copy of the disclosure document may be obtained by contacting the selling agent at the above address and telephone number." Similarly, a classified advertisement using the following language would ordinarily be acceptable: "Common stock of XYZ Corporation, a development stage database computer software company now conducting operations, Midtown, Ohio. Price $5 per share. Total offering 50,000 shares. This announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official disclosure document. A copy of the disclosure document may be obtained by contacting the company, Industrial Park, Suite 12B, 456 Mill Road, Midtown, Ohio (321) 321-4321.")

The issuance of any but routine press releases or the granting of interviews to news media during, or at about the same time of, an offering could constitute indirect advertising, which if not precleared with the securities department would be prohibited. Any unusual news article or news program featuring the company during the period, particularly if present or future earnings, or the pending offering, are mentioned, could delay or cause suspension of the effectiveness of the registration and disrupt the offering. Consequently any such news article or news program, no matter by whom it may be initiated, should generally be discouraged during this period.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on November 23, 1992 at 10 a.m. (ET) at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: David H. Ashley, General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Lewis Kelly

(1) Type and number of entities affected: There presently are no corporations who have sought to utilize Form U-7. The purpose of the adoption of Form U-7 by the department is to substantially reduce the cost and paperwork and to diminish the burden on small businesses in raising investment capital. Form U-7, as adopted by the North American Securities Administration Association, is a general registration form for companies registering under state securities laws, those securities which are exempt from registration with the Securities Exchange Commission. It is particularly designed to be used by companies, attorneys, and accountants who are not necessarily specialists in securities regulation. The main cost savings result in the company not having to prepare an extensive and expensive prospectus for potential investors as a part of the registration process. This proposed regulation sets forth the qualifications for those corporations desiring to utilize Form U-7 in raising investment capital. The proposed regulation further details the aggregate offering price of the securities which may not exceed $1,000,000. The proposed regulation further sets forth additional forms that must be filed with the Securities Exchange Commission and with the Department of Financial Institutions. This proposed regulation also details the manner in which securities may be offered to the public, and provides for the use of selling agents and the requirements those agents must have to sell the securities in this state.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by the amendment; therefore, there are no direct or indirect costs or savings.

1. First year: Companies utilizing Form U-7 will experience substantial costs savings in registering and selling their securities.

2. Continuing costs or savings: Continuing costs or savings would be the same as in (1) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There would be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The entities affected by this proposed regulation would realize substantial costs savings in registering their securities for sale within this state, or other states. An exact dollar amount per registration cannot be determined at this time.

(2) Effects on the promulgating administrative body: The affect on the promulgating administrative body would be minimal.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: There are no first year costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There would be no additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: The Department of Financial Institutions may receive slight additional revenue as a result of the small corporate offerings registrations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The adoption of Form U-7 and this proposed regulation provides an alternate method of registration of securities for small corporate offerings.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or in duplication.

(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:

(6) Any additional information or comments: The use of Form U-7, the small corporate offerings registration, will provide a less cumbersome, and less expensive means whereby small corporations may be able to raise capital on their own without the necessity of a full registration, or bank or other institutional financing which may not be available to them. This proposed regulation clarifies Form U-7 and will aid those corporations wishing to file Form U-7 with the department.

TIERING: Is tiering applied? No. The adoption of this amendment and the use of Form U-7 is available to all corporations.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Thrift Institutions

808 KAR 13:010. Examination fees for check cashing licensees; prohibited advertising.

RELATES TO: KRS Chapter 368

STATUTORY AUTHORITY: KRS 368.00 (KY Acts c. 213 Section 9(1)

NECESSITY AND FUNCTION: The purpose of this regulation is to establish fees for examination of check cashing licensees under KRS Chapter 368, and to prohibit false or misleading advertisement

relating to the fees charged for cashing checks.

Section 1. Examination Fees. Each licensee shall pay an hourly examination fee; this fee shall be the same amount as charged to state-chartered banks pursuant to KRS 287.480(4). All fees collected and paid under the provisions of this regulation shall be held in a trust and agency account pursuant to the provisions of KRS 287.485.

Section 2. No licensee shall advertise, print, display, publish, distribute, broadcast or televise, or permit to be advertised, printed, displayed, published, distributed, broadcast or televised, any statement or representation with regard to the fees charged for cashing checks which is false, misleading, or deceptive.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on November 23, 1992 at 10 a.m. (ET) at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: David H. Ashley, General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Ella Robinson
(1) Type and number of entities affected: The proposed regulation would apply to all entities which have applied for a check cashing license pursuant to KRS Chapter 368 which became effective July 14, 1992. At present there are less than a dozen such entities licensed by the department.
(a) Direct and indirect costs or savings to those affected: The department has not as yet examined any check cashing licensees; therefore there are no direct or indirect costs or savings.
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: Minimal
(2) Effects on the promulgating administrative body: The effect on the promulgating administrative body, should the number of licensees increase and examinations become numerous, may require additional personnel.
(a) Direct and indirect costs or savings: See above.
1. First year: None
2. Continuing costs or savings: The cost to the department should be the same as the fees for examination charged.
3. Additional factors increasing or decreasing costs: At this time none.
(b) Reporting and paperwork requirements: It is anticipated that there may be minimal additional examinations conducted by the Division of Thrift Institutions, but that the reporting and paperwork requirements would be minimal.
(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: There is no 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: Is tiering applied? No. The adoption of this regulation would apply to all entities licensed under KRS Chapter 368.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal

815 KAR 25:030. Certified installers of manufactured housing.

RELATES TO: KRS 227.550-660
STATUTORY AUTHORITY: KRS 227.570(2)
NECESSITY AND FUNCTION: This administrative regulation is necessary in order to establish criteria for the proper installation of regulated manufactured housing by persons qualified to make the installation as required by KRS 227.570(2).

Section 1. Definitions. The following definitions shall apply to this administrative regulation:
(1) "Approved course of education" means education instruction approved by the Mobile Home Certification and Licensure Board to qualify for certification or to renew certification. This definition shall include:
(a) Manufactured Housing Resources Course, P. O. Box 9, Nassau, Delaware 19968, George Porter, Instructor.
(b) Manufactured Housing Installation Course, prepared by the National Conference of States on Building Codes and Standards (NCS/BCS), 505 Huntmar Park Drive, Suite 210, Herndon, Virginia 22070.
(c) Other courses approved by the board.
(2) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).
(3) "Certified installer" means the person qualified to install manufactured (mobile) homes in Kentucky, including the individual applicant.
(4) "Certified installer examination" means the written or oral examination administered by the office to persons seeking to be certified as a certified installer; or the examination administered by the organization following an approved course of education.
(5) "Certified installer identification card" means the card issued by the office to a certified installer.
(6) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.
(7) "Office" means as defined in KRS 227.550(13).
(8) "Person" means an individual, partnership, firm, corporation, association, or other entity.

Section 2. Requirements for Certification. (1) After September 1, 1993, all applicants for certified installer shall comply with the following:
(a) Make application to the department on the form provided in Section 6 of this administrative regulation;
(b) Pay an application fee of fifty (50) dollars;
(c) Attend fifteen (15) class hours of an approved course of education; and
(d) Pass the certified installer examination approved by the board.
(2) Grandfather clause. Prior to September 1, 1993, examination shall not be necessary if the applicant provides satisfac-tory proof to the office that the applicant has installed a minimum of ten (10) manufactured homes within the twenty-four (24) month period prior to September 1, 1993, and that the applicant has attended fifteen (15) class hours of an approved course of education.

Section 3. Renewal of Certification; Continuing Education. A certified installer shall be recertified annually from July 1 until June 30

of the following year after:

(1) Making approved application, including a twenty-five (25) dollar renewal fee; and

(2) Providing proof of a minimum of five (5) class hours of educational courses, provided by or approved by the department, annually.

Section 4. (1) Mandatory certification. After the effective date of this administrative regulation, each manufactured (mobile) home regulated by KRS Chapter 227 shall be installed by a certified installer or under the supervision of a certified installer.

(2) All installations shall be made in accordance with standards set forth in 815 KAR 25:010, Section 4(6).

Section 5. Application of Installation Certification Label. The certified installer making the installation of any unit shall apply a label provided by the department to the unit following installation which tells when and by whom the installation was made.

Section 6. Application Form. Any person, firm or company making application to be a certified installer shall complete the following form and the certificate shall be issued jointly in the name of the applicant and any company with whom the applicant shall be associated.

OFFICE OF THE STATE FIRE MARSHAL
MANUFACTURED HOUSING SECTION
1047 US 127 SOUTH
FRANKFORT, KY 40601

CERTIFIED INSTALLER APPLICATION

This application must be COMPLETED in detail and PRINTED. No application shall be reviewed unless the instructions herein are complied with. All statements made in this application are subject to the penalties of perjury as set forth in the Certificate at the end of the application.

"Applicant," as used in this application, means an individual who qualifies himself and the company for which the applicant works.

1. CERTIFIED INSTALLER - $50. An installer of manufactured (mobile) homes shall be required to renew certification annually, July 1 through June 30 the following year, as required by 815 KAR 25:030.

2. Department of Revenue Sales and Use Tax Permit Number _____.

3. Certificate to be issued in:

   _____
   (Company Name) (Individual Name)

4. Name of owner or partners (principal owners or corporate officers indicate percent of business owned and title):

   NAME TITLE PERCENT

   _____
   _____
   _____

   Corporation Name: _____

5. Exact location of place of business:

   _____
   Street Address City

   _____
   Zip Code County Telephone #

6. Mailing address, if different from location of place of business:

   _____

7. Is the Applicant or Applicant's Company also a licensed Mobile Home Dealer in Kentucky? YES___ NO___. If so, what is the current dealer license number. _____

8. Is the Applicant or Applicant's Company licensed as a dealer in any other state? YES___ NO___. If so, list other states.

   _____

9. The undersigned is the applicant and is qualified to install manufactured (mobile) homes as required by 815 KAR 25:030. The applicant has read the statement contained in this application and states that the same are true and correct. The statements made herein are made under full and complete knowledge that fraudulent or misleading statements may be grounds for suspension, revocation or denial of the certificate for which this application is submitted. The applicant hereby certifies compliance with 815 KAR 25:030.

   _____
   Signature of Applicant for Company (if applicable)
   (individual taking exam)

   _____
   Social Security Number Home Telephone Number

(GRANDFATHER CLAUSE ONLY)
PROOF OF INSTALLATION OF
10 MANUFACTURED (MOBILE) HOMES

List the name and address of each home installed by applicant.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

DENNIS L. DECKER, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 24, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 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 November 19, 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 in which case the person requesting the transcript

shall have the responsibility of paying for same. 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 by the above date 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: Judith Walden

(1) Type and number of entities affected: Approximately 10,000 mobile home buyers per year will be affected and approximately 500 applicants are anticipated the first year.

(a) Direct and indirect costs or savings to those affected: Because bad installations result in costly repairs, mobile home buyers may expect indirect savings of as much as $100 when their home has been installed by a certified installer and perhaps $50 annually thereafter. Certified installer applicants will pay an application fee of $50 and a $25 annual renewal fee.

1. First year: Approximate figure: 500 applicants could produce $25,000 revenue based on $50 application fee.

2. Continuing costs or savings: Renewal of those 500 applicants could produce $12,500 annually.

3. Additional factors increasing or decreasing costs: (Note any affects upon competition) Factors increasing or decreasing figures would depend upon number of applicants seeking certification.

(b) Reporting and paperwork requirements: Certified installers will provide monthly report to the office.

(2) Effects on the promulgating administrative body: It is not anticipated that the additional administrative work to be handled by office will produce an undue burden.

(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 revenue: $50 application fee and $25 annual renewal fee

(4) Assessment of alternative methods; reasons why alternatives were rejected: None rejected.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping or duplication: Not aware of any conflicting, overlapping or duplicating law.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering not applicable because all homes need to have same minimum standards and all persons making those installations need to be trained in proper installation.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services

905 KAR 1:350 Family preparation section.

RELATES TO: KRS 199.462, 199.471, 600.020, 605.090-130, 42 USC 671, et seq.

STATUTORY AUTHORITY: KRS 194.050, 199.472, 605.150

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 KRS 199.472 and 605.150 the Department for Social Services has promulgated administrative regulations that shall enable staff to determine the applicant's capacity for adoptive or foster parenthood pursuant to KRS 605.090 through 130. This administrative regulation has been promulgated in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Family annual reevaluation" means a periodic joint evaluation process used by the department and foster or adoptive parents to:

(a) Assess the changes in a family;

(b) Review the ability of the family to meet the needs of children; and

(c) Determine continuing compliance with standards and expectations.

(2) "Family preparation" means a joint assessment process used by the department and the applicant for the purpose of determining whether the family may serve children the department has available for placement and how they may best meet these children's needs.

(3) "Foster or adoptive family review" means an assessment process used by the department when factors are identified which may put the family under stress and may affect the placement of a child.

(4) "Foster home contract" means a written contract, the DSS-111 incorporated by reference in 905 KAR 1:340, Out-of-home care, that details mutual expectations of the department and the family home for the twenty-four (24) hour care of the children.

Section 2. General Requirements for Foster and Adoptive Parents. (1) Foster and adoptive applicants and approved families shall meet the following requirements with exceptions approved by the family services district manager:

(a) Personal qualities and relationships that enable them to perform the responsibilities entailed in caring for children.

(b) Applicants shall be between the ages of twenty-one (21) and sixty-five (65) years and may be of an age to have naturally parented the age child they seek to have placed with them.

(c) The number of children in a home shall be determined by the stamina, capacities and skills of the parents, physical accommodations of the home, and the effect of a child's placement on the equilibrium of the family as a unit.

1. Except in placement of sibling groups or where there is more than one (1) responsible adult in the home who can give full-time care to the children, more than six (6) children, including the foster children and the foster parents' own children living at home shall not reside in the family foster home. The family services district manager shall approve exceptions for up to ten (10) children. Placement of more than ten (10) children including the foster parent's own children, shall be granted by the Director of Family Services.

2. More than three (3) infants including the foster children and foster parent's own children shall not be in the same home at the same time. Limitations on the number of special needs, medically fragile, or family treatment children who can be placed in a family foster home are specified in Section 11 of this administrative regulation.

(d) Employees of the department shall not be foster parents but may apply to adopt a child. An adoptive application shall not be processed in the office in which the applicant is employed or in an office served in an official capacity by the employee applicant. The employee may be referred to other licensed agencies.

(e) Applicants, including their children and other household members shall possess good mental and physical health and be free from communicable diseases, and specific illnesses or disabilities which interfere with the family's capability to care for children. An examination for the household members shall be completed by a physician, nurse clinician under the supervision of a physician, or a

nurse practitioner within a year preceding the date of application is required. After approval, the worker may require a foster parent to supply documentation of their current health status, if a question arises about the foster parent's health.

1. A physical disability in a household member which does not interfere with the parents' ability to give adequate care to a child shall not prevent approval.

2. If a household member has received mental health services, he shall be asked to sign a medical release to obtain a report or evaluation regarding the emotional or mental health of that individual.

3. Adoption applicants shall inform the agency of their medical insurance carrier and the provisions of the carrier for including an adopted child on the policy. If the family does not have medical insurance coverage, they shall be advised of the risks involved and encouraged to provide coverage for their family. The family shall be informed of the agency's medical coverage for children in foster and adoptive placement.

(f) Applicants shall be expected to have an income sufficient to meet their present family's needs and to insure the stability of the family unit. Applicants who have children not in their custody shall provide copies of the child support decree.

(g) Applicants who are employed shall be required to have a plan for child care by the time of placement.

(h) Foster parents shall accept children for foster care from the Department for Social Services unless otherwise specified in a contract between DSS and another child care provider; except in those cases where foster parents accept children from the Fiscal Courts.

(i) Foster parents shall not care for unrelated adults on a commercial basis or be licensed and accept children for day care at the same time they are approved as foster parents to provide twenty-four (24) hour care for children without the approval of the Director of Family Services.

(j) Home environment. The family shall have access to schools, recreation, churches, medical care and community facilities. If the home adjoins a place of business open to the public, consideration shall be given to the impact of the business upon the family and child. Factors including hours of operation, type of business and clientele shall be examined in terms of their potential impact. Physical standards of the home shall be of a degree of comfort sufficient to insure the well-being of the family.

1. The home shall have bedroom space to allow occupants sufficient living space.

2. More than four (4) children, including the foster parent's own children, may not share a bedroom.

3. Each child shall have a bed and each infant a crib but more than two (2) children may not share a bed.

4. If children sleep together, consideration shall be given to age, sex, and background.

5. It is desirable that adults not share a bedroom with a child. Exceptions may be approved for infants and toddlers by the district manager.

6. Children's bedrooms may generally be on the main floors of the house. Attic or basement bedrooms shall have adequate ventilation and be comparable to other living areas of the house.

7. Physical standards of the home shall not present hazards to the safety and health of a child and shall be well heated and ventilated.

8. Medications, alcoholic beverages, poisonous and cleaning materials shall be stored in cabinets inaccessible to small children.

9. Children's access to potentially dangerous animals shall be restricted.

10. Ammunition and firearms shall be stored in separate places.

11. First aid supplies shall be available and stored in a place easily accessible to adults.

12. A telephone or other means for immediate access to communication with the outside community shall be available.

13. The home shall be equipped with working smoke alarms within ten (10) feet of each bedroom. It is suggested that decals, indicating children in the home, be obtained from local fire departments.

(k) Marriage and family relationships.

1. Married applicants shall have been married for at least two (2) years prior to approval. An exception may be granted by the Family Services Office Supervisor for married applicants who have been married for more than a year but less than two (2) and whose relationship has been continuous and stable for at least a two (2) year period. The decision to foster or adopt shall be agreed to by members in the household, including children of appropriate age.

2. Previous divorces, deaths of spouses, and the present marriage shall be verified by a copy of marriage certificate, divorce judgments, or verifications of deaths.

3. Applicants who have children not in their custody shall provide copies of the visitation order.

4. A single person may apply to be a foster or adoptive parent. Single persons living together as spouses may not apply. An adult living in the family who may care for the child shall meet requirements, including attendance at the group preparation meetings.

5. If an approved parent marries, the new spouse shall meet the same certification requirements and shall be approved as a foster or adoptive parent for the home to remain open. This preparation process shall normally be completed within six (6) months. Foster children may be placed in a foster family home if the preparation process has been initiated and if placement is determined to be in the best interest of the child.

(l) Applicants shall provide names of two (2) personal references one (1) of which shall be a neighbor, a present or former employer, adult children not living in the home and two (2) credit references. A telephone or personal interview shall be conducted with the neighbor, with the present or former employer if employed, and adult children not living in the home. After the receipt of the other references, which may be written, if there is a question as to the appropriateness of the applicants, a telephone or personal contact shall be made with the reference.

(m) Criminal record. Applicants and other adults, including adult children who live in their household, shall authorize the release of criminal records to the department by completing a DSS-216, Police Record Search, herein incorporated by reference.

1. The Central Office Children's Benefits Coordinator shall request record checks from the state police upon receipt of the completed DSS-216 and return completed checks to the worker to be filed in the applicant's case record. Reported criminal convictions shall result in contact with the court of jurisdiction for a complete history of the offense.

2. Central office staff shall check the child abuse and spouse abuse registry for previous allegations.

3. If the applicant has lived in another community or in another state, a request for records search of those locations shall be made prior to approval. Court records shall be checked for the disposition of an arrest record. With the exception of the state police, the worker shall contact the law enforcement agencies.

4. If there has been a conviction or fine on a charge other than minor traffic offenses, the applicant shall provide evidence of rehabilitation by submitting a statement from an appropriate justice agency attesting to the individual rehabilitation and a character reference from a person with good standing in the community, not a relative or close friend, and from the employer, who are aware of the conviction and who can attest to the person's behavior since the conviction.

5. Personal references shall be personally interviewed if the applicant or household member has been convicted of a crime.

6. If an applicant or member of the household has been convicted of a misdemeanor or felony, permission to proceed with the preparation process shall be given by the district manager.

(2) Applicants who are in the department's pool of families awaiting preparation for a nonspecial needs child may register with another agency. Applicants may remain registered with the other agency and request a special needs child from the department. Preparation for a special needs child shall begin immediately. If the applicant receives a child from another source, adopted or birth child, their request to the department shall not be considered for one (1) year from the time of placement or birth.

(3) Foster parent role expectations. Foster parents shall be informed of the following role expectations during the preparation process:

(a) To the child:

1. Foster parents shall provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual and emotional development of the children in their home. Foster parents of children ages zero to six (6) are to provide appropriate opportunities for activities which stimulate the growth and development of the child.

2. Foster parents shall assist the children to develop skills and to perform tasks which shall promote independence and the ability to care for themselves.

3. Foster parents shall cooperate with the agency to help the children maintain an awareness of their past, a record of the present, and a plan for the future.

4. Foster parents shall ask children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children.

5. Foster parents shall provide well-balanced daily meals and are encouraged to eat together as a family. Foster parents shall have snacks available for children.

6. Foster parents shall provide for special dietary needs of children placed in their home.

7. Foster parents shall provide each child with their own clean, well-fitting, attractive and seasonal clothing appropriate to age, sex and individual needs, and comparable to the clothing of their own children and community standards. Foster parents shall include the children in the choosing of their own clothing if possible.

8. Foster parents shall allow children to bring and acquire personal belongings. Foster parents shall send personal clothing and belongings with the children when they leave the family foster home.

9. Foster parents of adolescents shall work with them to establish and enforce curfews.

10. Foster parents shall not leave children under age fourteen (14) without responsible supervision. The department may require constant adult supervision of the developmentally disabled child over fourteen (14) as a part of the child's treatment plan.

11. Foster parents shall cooperate with the agency in the medical and dental care planning for the child by scheduling appointments as needed and by being responsible for keeping immunizations current.

12. Foster parents shall report to the department encounters with medical providers and corrective or follow-up medical or dental care the child needs.

13. Foster parents shall be responsible for arranging transportation for children to necessary medical and dental appointments if possible.

14. Foster parents shall give children prescribed medications only with a physician's prescription or authorization, and shall dispense the exact amount of medication prescribed for a child by a physician or dentist.

15. Foster parents shall inform the agency within one (1) working day of a psychotropic medication prescribed for a child.

16. The foster family shall treat personal information about a child and the child's family in a confidential manner.

17. Foster parents shall provide an allowance for the child's discretionary spending at the rate set by the department in the foster home contract. Foster parents shall not make demands that allowance money be spent on family activities initiated by the foster parents.

18. Foster parents shall encourage children to establish savings accounts.

19. Foster parents shall not accept part of a child's earned or unearned income without prior, written agreement of the department and the child.

20. Foster parents shall recognize, encourage and support the religious beliefs, ethnic heritage and language of a child and his family. Foster parents shall attempt to arrange transportation to religious services or ethnic events for a child whose beliefs and practices are different from their own. If this is not possible, or it is believed to be inappropriate then permission to exclude the child from these activities may be sought from the court.

21. Foster parents shall not coerce children to participate in religious activities or ethnic events against their will or beliefs. If other approved child care arrangements are not available, the department may reimburse babysitting expenses for children who choose not to attend church with the foster parents because it is against their will or beliefs.

22. Foster parents shall enroll each child of school age in school within three (3) days of the placement of the child. Exceptions may be made by the Family Services Office Supervisor.

23. Foster parents shall cooperate and shall take part with the department in the selection and arrangements for educational programs appropriate for the child's age, abilities and treatment plan.

24. Foster parents shall plan with school personnel if there are problems with the child in school, but still report to the department serious situations which may require its involvement.

25. Foster parents shall provide opportunities for recreational activities which are appropriate to the age and abilities of the child.

26. Foster parents shall encourage children to take part in community services and activities both with the family and on their own.

(b) To the child's family:

1. Foster parents shall present a positive image of the child's family to him.

2. Foster parents shall be a supplement, but not a replacement, for the child's own parents.

3. Foster parents shall demonstrate respect for the child's own family and shall agree to work with the child's family members as indicated in the case plan for out-of-home care.

4. Foster parents shall participate in the development of the visitation agreement and allow children and their family members to visit and communicate in accordance with the visitation agreement.

5. Intercepting or reading incoming or outgoing mail of a child shall be prohibited.

(c) To the department:

1. Foster parents shall cooperate in the ongoing monitoring of their homes and shall give the information required for the agency to verify compliance.

2. Foster parents shall annually participate in a minimum of six (6) hours of training.

3. Foster parents shall take part in planning for the children and shall cooperate in the preparation, preplacement and visitation plans for the children placed in their home.

4. Foster parents shall be willing to work cooperatively with the agency staff as a team in the development and implementation of the case plan and participate in the case review for each child.

5. Foster parents shall provide advance notice if possible to the agency regarding changes which affect the life and circumstances of the foster family.

6. Foster parents shall notify the agency immediately of illness, accidents, or any unusual circumstances affecting the health, safety, physical or emotional well-being of the child.

7. Foster parents shall maintain records in accordance with the agency procedure for the children placed with the family.

Section 3. Recruitment of Families. (1) Statewide recruitment efforts to find foster and adoptive families shall be the responsibility of recruitment and certification staff.

(2) Recruitment expenditures.

(a) Each district may spend up to $500 per quarter for expenses related to recruitment and parent training, except Jefferson and Bluegrass which may spend up to $1,000 per quarter. The major restriction on the use of these funds shall be printing costs which shall be provided by existing state government resources. Each district shall be responsible for monitoring expenditures related to recruitment and training.

(b) Expenditures in excess of $500 but less than $1,000 shall have three (3) informal bids with the lowest bidder receiving the contract after prior approval from central office.

(3) Foster parent recruitment bonus. If applicants who are approved as foster parents have named a current foster parent as their referral source, the referring foster parent may be paid a fifty (50) dollar bonus. Families studied for a child already in their home shall not be eligible.

Section 4. Preparation and Selection of Families. (1) Family preparation shall be completed in group settings with other applicant families. Families who attend group preparation are not obligating themselves to accept a child, nor is the agency obligating itself to grant foster or adoptive home approval or placement of a child. Rare exceptions to group participation may be given by the director upon approval of an individualized training plan. Preparation sessions are scheduled at least quarterly in each district and prospective parents may be given the options of attending preparation group conducted in another county or district, or, waiting for the next group to begin in the local county. Applicants shall complete a minimum of eighteen (18) hours of preparation and may be given applications after the first preparation sessions.

(a) The goals of the group preparation shall be:

1. To orient the applicants to the philosophy and process of the department's adoption and family foster care programs;

2. To develop greater self-awareness on the part of the applicants to determine their strengths and needs;

3. To prepare applicants by sensitizing them to the kinds of situations, feelings, and reactions that are apt to occur with children;

4. To effect behavior so that applicants may better fulfill the function of their role as parents of an adopted child or foster children.

(b) The preparation process shall emphasize:

1. Self-evaluation through discussions;

2. Participation in small group exercises;

3. Discussions with experienced adoptive and foster parents.

(2) Inquirers shall be given a brief explanation about the need for families and shall be invited to attend an information meeting to learn about the department's adoption and family foster care programs.

(a) A "snap book" of waiting children shall be available in the local DSS offices.

(b) A listing of licensed child placing agencies may be offered to the inquirer.

(c) A worker shall not recommend independent adoption, but may explain the procedures for independent adoption pursuant to KRS 199.473.

(d) A worker shall not refer a family to an attorney or a physician or other intermediary for the purpose of arranging an independent adoption.

(e) Staff shall maintain information on those who inquire about foster or adoptive parenting, except for adoption inquiries for a nonspecial needs child which has a closed intake.

1. Foster parent inquiries shall be kept on a log.

2. A record of those inquiring about special needs adoption shall be kept on the DSS-1256, Adoption Intake Form, herein incorporated by reference.

(3) Requests for adoption preparation, called "SNAP Intake", shall be available for families who desire to adopt:

(a) White children aged ten (10) or over;

(b) Black or black and white children;

(c) Sibling groups of three (3) or more children;

(d) Severely emotionally disturbed or physically disabled children; or

(e) Educable, trainable, severely or profoundly mentally disabled children. This includes children with I.Q.'s of seventy (70) and below.

(4) Information meetings shall be scheduled monthly or at least quarterly in a convenient location for applicants. If the applicants are married, both husband and wife shall attend the information meeting. Families who sign a DSS-197, SNAP Intake Statement, incorporated herein, regarding adoption and those who express an interest in foster family care are invited to begin the preparation process. Applicants shall be informed at the information meeting of:

(a) Their right to request an administrative review if differences arise which cannot be resolved through supervisory channels; and

(b) Their right to a fair hearing:

1. If the home is being closed; or

2. If placements into the home are being suspended.

(5) Family interviews shall be required and individual family member interviews may be scheduled if needed with one (1) family interview in the home.

(6) If the need for adoptive families for nonspecial needs children arises, central office staff shall identify applicants from the register of waiting families and notify local staff to begin the preparation process. Applicants moving out-of-state shall be removed from the register with the following exceptions:

(a) Kentucky inducted military families; and

(b) Families who are temporarily assigned out-of-state by their employer for a period not to exceed eighteen (18) months. (7) Applicants requesting a transracial placement shall attend a preparation session on adopting transracially.

(8) Withdrawal of applications:

(a) Applicants may voluntarily withdraw their application on their own initiative.

1. Applicants who voluntarily withdraw are given written notice confirming their decision by the supervisor within two (2) weeks.

2. Families who begin family preparation through SNAP and then decide not to consider a special needs child shall be considered to have voluntarily withdrawn.

(b) If it is determined that the applicants do not meet minimum requirements for foster or adoptive parents, a decision to recommend withdrawal may be initiated by the department. If the department recommends that the applicants withdraw:

1. The applicants shall be given written notice of the decision to recommend withdrawal of their application by the district manager within two (2) weeks of the decision.

2. If the applicants do not accept the reasons for the recommended withdrawal and refuse to withdraw their application, the worker and the supervisor shall hold a personal interview with the applicants to inform them of the department's recommendation and inform them of their right to request an administrative review.

3. Applicants are given written notice of the decision to withdraw their application by the district manager within two (2) weeks.

4. Home preparation shall cease when the decision is made to ask the applicants to withdraw.

(9) The foster or adoptive home narrative shall be completed based on a combination of information obtained in the preparation sessions and the family interviews.

(10) Approval.

(a) Applications are not considered complete until the applicants:

1. Complete and sign the application;

2. Complete the group preparation process; and

3. The required references and verifications are received.

(b) Upon completion of the application process, the worker submits for approval:

1. DSS-83, acceptance scale (adoption only);
2. DSS-122, family application;
3. Medical information;
4. Verification of marriage or divorce;
5. DSS-170, financial statement;
6. DSS-216, police record search and response;
7. DSS-104, foster parent I.D. (foster care only);
8. VS-26, verification of death (spouse);
9. Pictures;
10. Narrative;
11. Autobiographies;
12. Reference letters;
13. Approval letter; and
14. DSS-197, SNAP intake (adoption only).

(c) The family services district manager shall be required to approve or deny applicants with a misdemeanor conviction. The Director of Family Services shall be required to approve or deny applicants with a felony conviction or substantiated reports of either child or spouse abuse.

(d) Provisional approval may be granted only to families who have accepted placement of a committed child by order of the court and are requesting approval as foster parents. Prior to provisional approval being granted the following are required:

1. Family foster home applications;
2. Medical forms;
3. Contact with a minimum of two (2) references;
4. One (1) office interview and one (1) home visit; and
5. The applicants shall begin the preparation process within ninety (90) days of the court order or placement of the child.

(11) Adoptive families who are approved and waiting for a nonspecial needs child may be approved for placement of a special needs child and then reinstated to their original position on the register for a nonspecial needs child. To be approved for a special needs child, the following are required:

(a) Completion of the preparation process;

(b) SNAP intake statement, DSS-197;

(c) Update summarizing their preparation, interest in special needs children, and readiness for placement of a special needs child; and

(d) Approval of the district manager.

Section 5. Annual Foster Parent Training Requirement. (1) Both foster parents shall be required to participate in six (6) hours of annual training within one (1) year of approval or their most recent annual reevaluation.

(2) An individualized training plan may be developed for the foster parent who is unable to participate in group training because of employment or other circumstances and is reviewed for compliance during the annual reevaluation.

(3) The homes of foster parents who do not meet the training requirements shall be closed. The only exception shall be to families who have a child in their care who has developed a significant emotional attachment to the foster parents and whose best interests shall be served by preserving the placement. The approval of the district manager is required. Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) To assist foster parents in complying with the ongoing training requirements, the supervisor may approve babysitting for foster children and mileage. The supervisor may also approve tuition or fees in the amount of fifty (50) dollars per family per year or $100 per year for special needs, medically fragile or family treatment homes.

(5) Staff shall provide written notice of the foster parents' right to a fair hearing if the foster parents request to attend training provided or scheduled by the department is denied.

Section 6. Family Foster Home Annual Reevaluation. Personal interviews in the home with foster families and in the home or office with approved and waiting adoptive families are required annually during the anniversary month of the initial approval. Approved and waiting adoptive families whose updates are not current shall not be given consideration for children.

(1) Family foster home reevaluation:

(a) The worker, if necessary, updates the pictorial description file.

(b) Prior to completing the reevaluation, the worker reviews information in the family foster home record, including exit interviews and discusses areas of identified stress factors and concerns with the foster family. If the family has an individualized training plan, it is reviewed for compliance and plans are made for the family's continued compliance with the training requirement.

(c) The DSS-885, Foster Family Reevaluation and DSS-885A, Foster Child Supplement herein incorporated by reference are completed.

(d) A family who has never received a child or had a placement by the fifth anniversary date shall no longer be considered as a placement resource.

(2) Adoption reevaluation:

(a) The worker updates information on approved and waiting adoptive families and also informs them of children currently waiting placement by sharing the SNAP Book.

(b) The family is given an opportunity to review and change their acceptance scale.

(c) Significant changes in the family i.e., income, health, marital status, etc. are noted in the narrative update which is approved by the supervisor.

(d) A family who has never received a child or had a placement by the fifth anniversary date shall no longer be considered as a placement resource. The worker may request an extension for families waiting for nonspecial needs children.

(3) If a family changes their address, the narrative section shall be updated in the record. For an adoptive family, a copy is submitted to the Central Office Adoption Specialist.

(4) If the family moves to a different area of the state, the worker notifies the appropriate supervisor prior to forwarding the record and if possible, the name and phone number of the new worker is provided to the family prior to the move.

Section 7. Foster or Adoptive Family Reviews. (1) The worker shall conduct a review within a month of notification if there are factors which may place unusual stress on the family or create a situation which may place a child at risk. Factors include, but are not limited to:

(a) Death or disability of a family member;

(b) Change in marital status;

(c) Sudden substantial decrease in or loss of income;

(d) Childbirth;

(e) Both foster parents have reached the age of sixty-five (65); and

(f) Use of a prohibited form of punishment or a substantiated abuse or neglect report.

(2) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation which initiated the review;

(d) An evaluation of the family functioning to determine if the child's needs are met; and

(e) A plan for corrective action which may include a recommendation for closure of the home.

(3) If abuse or neglect or dependency is established or there is some indication, a review of the home shall be completed. The decision to close or continue using the home is made by the Family Services District Manager based on pertinent available information.

Section 8. Closing Approved Homes. (1) Families approved who have not received a placement within five (5) years shall be closed on

the fifth anniversary of their approval date unless an indefinite extension is granted for adoptive families waiting for a nonspecial needs child. A home may be closed at the request of the foster or adoptive parent; when the recruitment and certification worker determines that the family does not meet the general requirements for foster or adoptive families; or, if a situation exists that is not in the best interest of the child. If one (1) of the following occur, the home shall be closed:

(a) Substantiated sexual abuse or exploitation by the foster or adoptive parents;

(b) Substantiated physical abuse of a child or spouse serious in nature or warranting removal of the victim;

(c) Presence of a serious physical or mental illness which may impair or preclude adequate care of the child by the parent.

(d) Conviction of a felony offense by the parent.

(2) If closure is necessary for an adoptive family who has a child placed, but the adoption is not finalized, the worker and supervisor shall consult with the Family Services District Manager and the Office of Counsel regarding removal of the child from the home.

(3) A summary is written which contains:

(a) An evaluation of placements for a period of time not previously recorded;

(b) The reasons for closure;

(c) The reactions of the family to closure; and

(d) The family's potential appropriateness for parenting if they reapply.

(4) If it is necessary to close an approved home, the reasons are shared by the worker and supervisor in a personal interview with the family.

(5) Written notice confirming the decision to close a home shall be completed within two (2) weeks if the family requests closure, within thirty (30) days of the interview for adoptive parents and no later than ten (10) days prior to the closing for foster parents. The written notice shall include:

(a) Notice that the department shall no longer place foster children in the home;

(b) Notice that the contract between the department and the family foster home is terminated;

(c) The reasons for the family foster home being closed; and

(d) Notice of the foster parents right to appeal and the procedures for initiating an appeal.

Section 9. Reapplication. Former foster and adoptive families who were closed in good-standing with the department with no deficiencies may reapply. Adoptive parents who were closed following finalization of an adoption may also reapply. A family whose home was closed for specific problems or identified family issues may reapply following one (1) year. The issues or problems that led to the closure shall have been resolved.

(1) To reapply the foster and adoptive family shall:

(a) Attend an information meeting to become familiar with changes in policy and procedure;

(b) Attend group preparation, and exception may be made only for parents who have previously attended group and are considered excellent resources for children;

(c) Complete application forms, medical records, references and criminal records and registry checks.

(2) The worker shall complete an updated narrative.

Section 10. Foster Parent Adoption. (1) Foster parents may ask to adopt a child in their care, and may be considered when the child is legally available for adoption and if it is in the child's best interest. Approval of a foster parent's request to adopt a child in their care is the decision of the district manager.

(a) Foster parents shall attend a group or individual preparation session on adoption;

(b) The documentation for foster parent adoption is forwarded to the manager within three (3) months after foster parent adoption has been identified as the plan for the child and parental rights have been terminated.

(c) The application for adoption is initiated no later than one (1) month after the foster parent has indicated a desire to adopt a child who is available for adoption, unless the family has already been approved for adoption. If the application form has not been completed within the designated time period:

1. A conference is held with the foster parents, family worker, Family Services Office Supervisor, R & C Supervisor, R & C worker, and child, if appropriate, to discuss:

a. The reasons for delay; and

b. To develop plans to meet the permanency needs of the child; and

2. If the foster parents intend to proceed with the adoption, time frames are established and monitored. Failure to adhere to the agreed upon time frame may result in a review by the Family Services District Manager and a decision made regarding the foster parent adoption.

(2) If the foster parents desire to adopt a foster child in their home, but the adoption cannot be recommended by the family services worker, R & C worker and supervisory staff shall:

(a) Submit a memorandum through channels to the manager summarizing the situation and stating the reasons for not recommending the adoption;

(b) The manager reviews the material, meets with appropriate staff and if necessary, consults with Office of Counsel regarding the facts of the case;

(c) If the manager agrees that the foster parent adoption cannot be approved, the worker informs the foster parent of the decision and of his right to request a conference to discuss his desire to adopt a foster child;

(d) If a formal family home application has been filed, the foster family shall be advised in writing of the decision by the manager; and

(e) The decision regarding the child's continued placement in the home shall be determined on an individual basis.

Section 11. Certification Requirements. (1) Relative foster homes.

(a) A relative may be approved as a family foster home for the placement of a specific child if it is in the best interest of the child and if the relative has met the same requirements as Section 2(1)(a)-(m) of this administrative regulation except:

1. An applicant who is between eighteen (18) to twenty-one (21) or over sixty-five (65) years of age may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the relative's age may not have a negative impact on the care of the child.

2. A relative applicant who has been married for less than one (1) year may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the length of the relative's marriage may not have a negative impact on the child.

3. A relative who has not completed group preparation requirements may be approved if they have an individualized training program.

(b) The Family Services District Manager shall be responsible for the approval of relative foster homes. Upon completion of the application process and family interviews, the worker submits the following for review prior to approval of the relative foster home by the district manager:

1. DSS-122, family application;
2. Medical Information or other medical report documentation;
3. Verification of marriage or divorce or other documentation;
4. Financial statement;
5. DSS-216, police record search and response;
6. Verification of death if applicable;
7. Narrative;

8. Autobiographies;

9. Reference letter; and

10. Approval letter.

(c) Relative foster homes are reevaluated annually or if a significant change occurs.

(2) Emergency shelter foster homes.

(a) Foster parents who care for children age twelve (12) and above, who are in need of immediate, unplanned placement for less than thirty (30) days and for whom no other appropriate resources are available, shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and, to be eligible for the emergency shelter rate shall meet the following requirements:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker;

2. Personal qualifications.

a. Commitment to and understanding of adolescents and reasons for applying as emergency shelter foster parents shall be carefully explored; and

b. Because of the increased demands, the foster parents health and stamina, in relation to their age, shall be considered;

3. Home environment.

a. A telephone is required for general safety; and

b. Alcohol and medications shall be kept in a locked cabinet; and

4. Both foster parents, or the foster parent primarily responsible for the care of the children, shall complete ten (10) hours of training beyond the eighteen (18) hours required in preservice. Completion of the ten (10) hour training requirement does not automatically grant approval for emergency shelter care.

(b) The Family Services District Manager shall be responsible for the initial approval of emergency shelter foster homes and notification to the family. The request for approval to the Family Services District Manager shall include:

1. An evaluation of the foster parent's participation in and knowledge gained from the training;

2. A statement that additional requirements for emergency shelter foster care have been met;

3. Social worker's assessment of the past history of care for children, experience and qualifications in relation to the type of child requested; and

4. An evaluation of strengths and weaknesses.

(c) To receive ongoing approval, the foster family shall:

1. Continue to meet the emergency shelter foster home certification requirements in paragraph (a)1-4 of this subsection.

2. Both foster parents, or the foster parent with primary responsibility for the child's care shall have participated in ten (10) hours of ongoing training over the past year.

(d) Failure to meet the ongoing training requirement ends the family's approval for the emergency shelter rate. The rate then reverts to the base rate and whatever incentives the family is eligible to receive, or if the foster parents have not met the six (6) hour requirement, the home is closed.

(3) Special needs foster homes.

(a) Foster parents who care for children with special needs shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and shall meet the following requirements to be eligible to receive the special needs training incentive:

1. Consideration shall be given to the child care plan if both foster parents are employed outside the home or if a single foster parent is employed outside the home. Flexibility of employment and resources to meet the increased responsibilities shall be documented.

2. The internal and external environment shall be adaptable to the specific needs of the child, i.e., ramps, doorways, etc.

3. Requirements of regular foster care apply and in addition:

a. A one (1) parent family foster home may not care for more than two (2) children with special needs, including the foster parent's own children;

b. A two (2) parent home may not care for more than three (3) children with special needs, including the foster parent's own children; and

c. An exception may be granted by the district manager.

4. Personal qualification.

a. The commitment to children with special needs and reasons for applying as special needs foster parents shall be explored; and

b. Because of increased demands, health and stamina in relation to age is a consideration.

5. Home environment.

a. There shall be an emergency exit on each floor or the potential to provide exit, if needed in case of fire;

b. Transportation and the ability to adapt transportation to accommodate special equipment safely shall be available;

c. The dispensing of life sustaining daily medications shall be documented on a log. If a child takes a prescribed medication, an over the counter drug shall not be administered without the advice of a physician; and

d. A telephone is required for general safety.

6. Both foster parents or the foster parent primarily responsible for the child's care shall successfully complete twenty-four (24) hours of training beyond the eighteen (18) hours required in preservice but completion of the twenty-four (24) hours of training requirement does not automatically grant approval as a special needs foster home.

(b) The district manager shall be responsible for the approval of special needs foster homes. The request for approval to the district manager shall include an evaluation of the foster parents participation in and knowledge gained from training.

(c) Special needs foster families shall receive annual ongoing approval by the district manager during their annual reevaluation which shall indicate that the family foster home:

1. Continues to meet the special needs foster home certification requirements; and

2. Both foster parents, or the foster parent with primary responsibility for the child's care, shall meet one (1) of the following criteria:

a. Have participated in twelve (12) hours of training over the past year provided by the department or approved in advance by the R & C supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement:

(i) Planned meetings among special needs foster parents conducted by a social worker;

(ii) Participation in a retarded citizens or other association with an interest in special needs children;

(iii) Attendance at workshops or course work receiving prior approval of the supervisor; and

(iv) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor;

b. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for the special needs training incentive. The rate then reverts to the base rate and whatever incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement the home is closed.

(4) Medically fragile foster homes.

(a) Foster parents who care for medically fragile children shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and paragraphs (a)-(d) of this subsection to receive the medically fragile rate with the following exceptions:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment shall be made by the Director of Family Services.

2. Number of children in the family.

a. A one (1) parent family foster home shall not care for more than one (1) medically fragile child, including the foster parent's own children, and shall demonstrate that support services are available and may be provided.

b. A two (2) parent home shall not care for more than two (2) medically fragile children, including the foster parent's own children.

c. An exception for number of children in the family may be approved by the Director of Family Services for a home that has a live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

3. Training.

a. Foster parents who provide care for medically fragile children shall meet the same requirement for initial approval as in special needs and shall have had training in the areas of:

(i) Growth and development;

(ii) Nutrition;

(iii) Medical disabilities;

(iv) Current certification in CPR; and

(v) Current certification in first aid.

b. Prior to the placement of a medically fragile child and the payment of the fragile rate, the foster parent shall be trained in the techniques of caring for the specific fragile child to be placed.

4. The home shall be within one (1) hour of a medical hospital with an emergency room and within thirty (30) minutes of a local medical facility.

(b) The district manager shall be responsible for the approval of medically fragile foster homes. The request for approval to the district manager shall include:

1. An evaluation of the foster parents training related to medically fragile;

2. Documentation that additional requirements for medically fragile have been met;

3. The worker's assessment of the past history of care for children, experience and qualifications in relation to the type child requested; and

4. Recommendations for approval, including an evaluation of strengths and weaknesses.

(c) Medically fragile foster families shall receive annual ongoing approval by the district manager during their annual reevaluation. To receive ongoing approval the family foster home shall continue to meet the medically fragile foster home certification requirements. Both foster parents shall maintain current certification in CPR and First Aid and meet one (1) of the following criteria:

1. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the Director of Family Services. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

a. Planned meetings among medically fragile foster parents conducted by a social worker;

b. Participation in an organization associated with or having an interest in medically fragile children;

c. Attendance at workshops or course work receiving prior approval of the Director of Family Services; and

d. Individualized professional training from the medical profession related to the individualized needs of the child.

2. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for the medically fragile rate. The rate then reverts to the special needs or base rate and incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement, the home is closed. The Director of Family Services shall approve the continuing placement of a medically fragile child in a home if the training requirement has not been met.

(5) Family treatment homes.

(a) Foster parents who care for children who are determined to be appropriate for family treatment homes shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and shall meet the following requirements to receive the family treatment home rate:

1. Number of children placed.

a. A one (1) parent family foster home shall not care for more than one (1) family treatment child, including the foster parent's own child, and shall demonstrate that support services are available and may be provided.

b. A two (2) parent home shall not care for more than two (2) family treatment children, including the foster parent's own children.

c. Regardless of the status of the family, more than four (4) children may not be placed in the home.

d. An exception for number of children in the family may be approved by the Director of Family Services for a home that has live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

2. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment may be made by the Director of Family Services.

3. Families shall have a respite care provider available who shall also complete family treatment training.

4. Prior to approval as a family treatment home, both foster parents shall complete the twenty-four (24) hour family treatment training.

5. Family treatment home parents shall maintain daily logs of the child's activities, behaviors and intervention techniques used.

6. One (1) family treatment home parent shall attend all treatment planning conferences. Family treatment home families may serve, at the discretion of the family services worker, as a role model for the child's family in order to help the family learn how to implement the remedial components of care and supervision developed for the child.

(b) The district manager shall be responsible for the approval of family treatment homes. The request for approval is submitted to the district manager and shall include:

1. Documentation that the family treatment home training has been completed;

2. Documentation that all additional requirements for family treatment home have been met;

3. The names, qualifications and training of the respite care providers;

4. The worker's assessment of the past history of care for children, experience and qualifications in relation to the type child requested; and

5. Recommendations for approval, including an evaluation of strengths and weaknesses.

(c) To receive ongoing approval, the annual reevaluation shall indicate that the family foster home:

1. Continues to meet the family treatment home certification requirements which shall include:

a. A review of the foster parent's intervention skills and techniques;

b. Recordkeeping; and

c. Training and ability in meeting the established goals and objectives for the children.

2. Foster parents shall meet one (1) of the following criteria:

a. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the R & C supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

(i) Monthly planned meetings among family treatment home foster parents conducted by a social worker;

(ii) Attendance at workshops or course work receiving prior approval of the supervisor;

(iii) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor; and

(iv) Except attendance at the child's treatment planning confer-

ence and other child specific activity does not meet the annual training requirement.

b. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for family treatment home. The rate then reverts to the base rate and whatever incentives the family is eligible to receive, or if the foster parents have not met the six (6) hours requirement the home is closed.

Section 12. Material Incorporated by Reference. (1) The forms necessary for the implementation of the family preparation section are being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 24, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 19, 1992: Masten Childers, II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are 1452 foster home parents, adoptive home parents and prospective foster or adoptive parents that attend between 125-130 family preparation sessions each year.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department provides family preparation services.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations only clarify and correct terminology in the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

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

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Is tiering applied? No. This regulation was not tiered as it establishes the statewide policies and procedures for enabling the department to determine the applicant's capacity for adoptive or foster parenthood.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 5 and 6, 1992 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 5, 1992 at 2 p.m. and Tuesday, October 6, 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 September 3 and 4, 1992 meeting were approved.

Present were:

Members: October 5, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Pat McCuiston; Representatives Woody Allen, Jim Bruce and James Yates. October 6, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Wanda R. Delaplane, David R. Vanderventer, Attorney General's Office; Mary Lassiter, State Investment Commission; Warren Nash, Tom Howard, Finance and Administration Cabinet; Richard L. Ross, Julio Polio, Board of Pharmacy; Larry Perkins, Professional Engineers and Land Surveyors and Landscape Architects; Dave Nicholas, Division of Occupational Professions; Lauren Schaaf, Tom Young, Fish and Wildlife Resources; Don L. Notter, Roger Nesbitt, Buddy Sims, Department of Agriculture; Bob Logan, Kenneth M. Hines, John Hornback, Millie Ellis, Dave Rosenbaum, Jim Villines, James L. Dickinson, Jody Curry, Ronald Mills, Iris Skidmore, Natural Resources and Environmental Protection Cabinet; Sandra G. Pullen, Transportation Cabinet; Tom Campbell, Jack Damron, Department of Corrections; Trudy Sullivan, Lois Adams-Rodgers, Robert N. Trahan, Kevin Noland, Jim Terry, William Scott, Angela Wilkins, Rick Dear, Department of Education; Sue G. Simon, Workforce Development; George Parsons, Department of Vocational Rehabilitation; Carol Palmore, Erin Foley, Kembra Taylor, Heidi Engel, Labor Cabinet; Eugene D. Attkinsson, Mines and Minerals; Patrick Watts, Department of Insurance; Judith G. Walden, Department of Housing, Buildings and Construction; Ked Fitzpatrick, Anita Moore, Jayne M. Arnold, Greg Lawther, Michael Cheek, Thelma Cornett, Nancy Bruner Wilson, Lydia A. Roberts, Barbara Coleman, Dudley J. Conner, Cliff Jennings, Ryan Halloran, John Gray, Eric L. Hatton, Cabinet for Human Resources; Emily Mills, King's Daughters Memorial Hospital; Robert E. Spurlin; Larry Maggard; Susan Enlow, St. Joseph Hospital; Sonya Vittitoe, Association of Practitioners In Infection Control; V. Wayne Young, Kentucky Association of School Administrators; Nancy Galvagni, Sarah S. Nicholson, Kentucky Hospital Association; Doug Adams, Pikeville Methodist Hospital; Elizabeth A. Graver, Community Coordinated Child Care; Joe L. Clark, Pyramid Mining, Inc.; Forest M. Skaggs, Kentucky Telephone Association; Charles A. VanWinkle; John F. Nichols, Jr., AIK/Chemical Industry Council; Ed Hancock, AT&T; Rodney Ford, James B. Vernon, Kentucky Association of Career Colleges and Schools; Jim Baker, Western Kentucky Coal Association; Frank A. Brancato; Janice Kerr.

LRC Staff: Greg Karambellas, Joe Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman, Ethel R. Alston.

The Subcommittee determined that the following administrative regulations do not comply with statutory authority or legislative intent:

Transportation Cabinet: Office of Aeronautics: Airport Zoning Commission

602 KAR 50:020. Kentucky airport zoning administrator. This administrative regulation was amended to delete "either" and "or its orders" in Section 3(6).

Chairman Kerr pointed out that Section 1 provides that the "Administrator" of the Kentucky Airport Zoning Commission shall be a classified service employee. KRS 18A.115(1)(e) exempts "administrative heads of all boards and commissions" from the classified service. Section 1 of this administrative regulation therefore violates KRS 18A.115(1)(e).

Cabinet personnel stated that they considered deleting the language but decided that deletion of the Section would not take care of the problem. The Cabinet stated that the program had been in existence for at least 20 years and all administrators had been classified employees. Amendment of the statute may be the only way to correct this problem.

The subcommittee approved a motion that this administrative regulation was deficient pursuant to KRS 13A.120(2)(i) because Section 1 does not conform to KRS 18A.115(1)(e).

Department of Education: Office of Learning Program Development: Student Services

704 KAR 7:056. Conditions for administering corporal punishment. At the September 1992 Subcommittee meeting, Senator Huff objected to this administrative regulation because its requirement for 2 certified witnesses to the administration of corporal punishment and extensive record requirements violated legislative intent because its restrictions of corporal punishment made it virtually impossible to administer corporal punishment.

Chairman Kerr stated that: (1) Section 2 was amended at the September 1992 Subcommittee meeting to provide that "corporal punishment shall be administered only upon the buttocks of a student's body"; and (2) this administrative regulation was deferred to the October 1992 meeting to permit the State School Board to consider Senator Huff's objections.

Deputy Commissioner for Learning Support Services, Lois Adams Rogers, explained that certified staff are continuously trained in alternative forms of punishment, discipline, ways of changing behavior in a positive way, and training in the administration of corporal punishment. She stated that the State Board's position is that certified staff, who are trained in disciplinary alternatives, and have extensive experience in working with students are viewed as essential in: (1) determining the appropriate type of punishment for a student; and (2) serving as a source of support for their colleagues in choosing disciplinary alternatives. She also explained that if the school were sued, the staff would be in a better position to defend the lawsuit.

The Department stated that it would not agree to an amendment of this administrative regulation suggested by Senator Huff. Senator Huff commented that it is unfortunate that the Board is not in a position to compromise on these issues, and reiterated his objections to this administrative regulation. Senator Huff stated that language should be added to restrict paddling of older students because it would be less effective, if not impossible, to administer corporal punishment to older children.

Senator Huff added that the legislative intent expressed by action taken by the 1992 General Assembly was to retain corporal punishment without the restrictions found in this administrative regulation. Senator Huff moved that this administrative regulation be found deficient because it conflicted with legislative intent.

Representative Allen asked the Department to state the theoretical basis for banning corporal punishment. Deputy Commissioner Rogers explained the objective of any form of discipline is to attempt to "change the behavior of students". She added that corporal punishment changes behavior only on a short-term basis.

Commissioner Rogers stated that: (1) thirty school districts in Kentucky have reinstituted corporal punishment; and (2) the remain-

ing districts have elected not to amend the district code of conduct to permit corporal punishment. Representative Allen responded that many districts may elect to ban corporal punishment because of the fear of law suits. He added that a great deal of effective discipline is lost in Kentucky schools because of this.

Representative Bruce stated that it appeared that this administrative regulation should not have promulgated because it was the same or substantially similar to an administrative regulation that had been found deficient and expired. He asked for the opinion of Subcommittee staff. Subcommittee staff responded that the expired administrative regulation was found deficient because it banned corporal punishment, and that this administrative regulation permitted corporal punishment with restrictions.

Senator Huff stated that restrictions of corporal punishment violated legislative intent because it was clear no restrictions were permitted.

Senator McCuiston stated that corporal punishment is an effective disciplinary measure, particularly as it applies to younger children, and agreed with Senator Huff's motion that this administrative regulation be found deficient.

Senator Huff's motion that this administrative regulation, as amended at the September 1992 Subcommittee meeting, exceed statutory authority and did not comply with legislative intent, was approved.

Cabinet for Human Resources: Department for Social Services: Day Care

905 KAR 2:100. Certification of family child-care homes. This administrative regulation was amended to conform to the drafting requirements of KRS Chapter 13A relating to terminology, format and language.

Representative Bruce made a motion to amend Section 3 to require that family child care certified providers carry liability insurance. He explained that the amendment is for the benefit of in-home providers to prevent exposure to liability if a child should become injured.

Senator Huff inquired whether family child care providers are presently required to carry liability insurance. Staff responded that only licensed providers are required to carry liability insurance.

Subcommittee staff also explained that licensed facilities, which care for seven (7) or more children, are subject to more stringent standards, such as fir and health code standard, for licensure.

Subcommittee staff explained that Senate Bill 211 [Acts 1992, c. 57, Section 2] established: (1) mandatory certification for providers of four (4) to six (6) unrelated children; (2) a maximum number of ten (10) children that can be cared for which includes the providers own children; and (3) discretionary certification for the care of three (3) or fewer children.

Chairman Kerr asked why discretionary certification was established. Cabinet personnel explained that, if certified, providers would be eligible for Federal Child Care Food Program funds.

Chairman Kerr asked about the availability of liability insurance. Agency personnel stated that a few carriers provide this type of coverage. Cabinet personnel explained that the Cabinet felt that enforcement of the insurance requirement would be difficult.

Representative Bruce noted that his proposed amendment required a minimum of $100,000 per child liability. He amended his motion to delete the requirement for a minimum amount of liability assurance. Cabinet personnel stated that they had no objection to the deletion of the minimum amount. The Subcommittee approved Representative Bruce's motion.

In response to questions concerning the extent of certification requirements, cabinet personnel stated that Senate Bill 211 required mandatory certification for providers of four to six unrelated children, but did not require compliance with the fire and health code. The added that this administrative regulation complied with statutory authority because it establishes minimum health and safety requirements mandated by Senate Bill 211.

Representative Allen stated that many parents will not be able to afford the child care services that many of these homes provide because administrative regulations impose costly requirements. Cabinet personnel stated that mini grants are available to help with start-up cost for family child care homes.

Senator Huff objected to Section 3(2)(a) that requires a provider to employ an assistant if he cares for four infants. He felt this requirement was too costly for the provider. Cabinet personnel agreed that it would impose an additional expense, and stated that an assistant was necessary in case of fire or other emergency.

Senator Huff objected to the prohibition of physical punishment found in Section 4(7). Cabinet personnel stated that the Department for Health Services does not endorse corporal punishment.

Senator Huff stated that the Cabinet had closed a Barbourville children's home, serving thirty-eight children, when it determined that the home's disciplinary policy permitting the paddling of children violated Cabinet policy. Senator Huff stated that the home was permitted to reopen, only because he had amended a bill during the 1992 General Assembly to extend the right granted to schools under state law to discipline children to children's orphanages.

Senator Huff stated the Cabinet continued to subvert legislative intent by its prohibition of corporal punishment. He requested the Cabinet to remove language prohibiting "spanking" of children. Cabinet personnel refused.

Chairman Kerr stated that the prohibition in Section 7 was broad enough to prevent a parent, who was a provider, from spanking his own children. Cabinet personnel responded that when a parent is a provider, he could not spank his own child during the hours of operation.

Chairman Kerr requested the Cabinet to amend this section to permit parents to authorize the use of corporal punishment. The Cabinet refused.

Chairman Kerr stated that the Cabinet has taken a position that is clearly contrary to the legislature's position. He stated that the members of the General Assembly are the elected spokespersons for the citizens of the Commonwealth, and that the Cabinet did not have the authority to impose its philosophical ideals and policies on the citizens of the Commonwealth.

The Subcommittee approved a motion that this administrative regulation exceeded statutory authority and did not comply with legislative intent.

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A:

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Department of Law: Division of Consumer Protection

The following four administrative regulations were amended: (1) to comply with the drafting requirements of: (a) KRS 13A.222(4)(b) to express mandatory requirements by "shall"; (b) KRS 13A.222(4)(k) to delete prohibited words or phrases; (2) to comply with KRS 13A.2251 relating to incorporation by reference, specification of forms incorporated by reference, and availability of material incorporated by reference; (3) to reorganize the format and language to make the requirements of these administrative regulations clear; (4) to clarify the hearing process; (5) to insert language specifying that the decision of a hearing officer is not final but requires the approval, or other disposition, of the Attorney General; and (6) to delete language that repeats, summarizes or contradicts statutory provisions pursuant to KRS 13A.120(2)(e),(f).

40 KAR 2:001. Definitions.

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

The following three administrative regulations were amended to comply with the drafting requirements of KRS Chapter 13A and to reorganize the format in order to clarify requirements. In addition, if an administrative regulation contained sections in which the necessity and function of the administrative regulation were established, those sections were deleted, and the necessity and function section was amended where necessary.

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. This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222; reorganize the format to more clearly state the specific fees for specific items. Representative Allen, Senator Huff, and other Subcommittee members questioned the need for the increase in fees, the number and salary of board personnel. Board personnel responded to questions relating to the use of the additional funds received from the fee increase, and the need for additional personnel. Representative Allen and Senator Huff stated that: (1) the fee increases did not exceed the statutory maximum; (2) the legislative intent in establishing a maximum fee did not authorize an agency to charge the maximum unless it was warranted; and (3) the Board had not established that the economic facts it faced justified such an extraordinary increase in fees. Senator Huff moved that this administrative regulation be found to exceed statutory authority; Representative Allen seconded. The motion failed. Senator Huff and Representative Allen requested that their objections to this administrative regulation be noted.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040. Fees. Subcommittee members reiterated the objections to the fee increases which were raised when 201 KAR 10:050 was considered. This administrative regulation was amended to comply with drafting and format requirements of KRS Chapter 13A; to reorganize the sections relating to fees to clarify specific fees for specific items; and to specify the forms incorporated by reference. On the motion to approve this administrative regulation, Senator Huff and Representative Allen requested that their objections to this administrative regulation be noted.

Board of Respiratory Care

201 KAR 29:030. Complaint processing procedures. Section 4(1) of this administrative regulation was amended to comply with KRS 13A.222(4)(b) (expression of mandatory requirement); and KRS 13A.222(4)(c) (prohibition of "and/or").

201 KAR 29:040. Hearing procedures. This administrative regulation was amended to: (1) delete Section 1 in its entirety because the statement of purpose it contained should be a part of the NECESSITY AND FUNCTION paragraph and not contained within the administrative regulation; and the statement relating to liberal construction was redundant; and (2) to replace a missing conjunction.

201 KAR 29:050. Continuing education requirements. This administrative regulation was amended to comply with KRS 13A.222(4)(b) (expression of mandatory requirement); delete unnecessary language or repetitions; and to use consistent terminology.

201 KAR 29:060. Continuing education requirements for persons on inactive status; waiver. This administrative regulation was amended to comply with drafting and format requirements of KRS 13A.222.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:044. Taking of migratory wildlife. This administrative regulation was amended to: (1) Add the word "administrative" before the word regulation pursuant to KRS 13A.010(2); (2) Express mandatory hunting seasons for migratory wildlife with the word "shall" pursuant to KRS 13A.222(4)(b); and (3) set standards for determining dove hunter density on wildlife management areas after considering the terrain of the field, the topography of the field and providing approximately 40 yards between each hunter. Representative Bruce stated that he felt that the 40 yard requirement between hunters would be difficult to enforce. Agency personnel responded that the 40 yard requirement was an approximation based on the terrain and topography of each field.

Commerce Cabinet: Department of Agriculture: Livestock sanitation

302 KAR 20:058. Brucellosis eradication. This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222; reorganize the format to more clearly establish requirements, pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a) by: (1) Delineating two exceptions to mandatory depopulation with the phrase, "Except as provided in paragraphs (a) and (b)"; (2) Delineating subparagraphs with arabic numbers; (3) Reformatting the definition of "bovine herd"; (4) clarifying Section 2(2) by deleting the words "This shall be done by" in line 3 and adding the words "shall be" in line 4; (5) Clarifying Section 2(3) by adding the words "pursuant to KRS 257.120(2) if funds are available" and deleting "per KRS 257.120(2) as availability of funds permit"; and (6) Clarifying the ten (10) day retest option for farmers as well as providing that all notices to owners of cattle shall be by certified mail.

The administrative body did not submit the required approval of the State Board of Agriculture when it filed the administrative regulation. However, the administrative subsequently documented that the administrative regulation had been approved by the appropriate board. Chairman Kerr advised that pursuant to KRS 13A.220(5)(a) the Department is required to provide "a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred." Chairman Kerr stated that the approval must be submitted with the initial filing of the administrative regulation.

The subcommittee approved a motion to reconsider this administrative regulation in 60 days to determine whether the "Uniform Methods and Rules for Brucellosis Eradication" needed to be incorporated by reference.

Representative Bruce pointed out that if one brucellosis reactor is found in a herd then that herd is to be quarantined for 300 days. He further stated that results of brucellosis tests may turn negative after a positive brucellosis test. Department personnel stated that if they have conflicting test results, the animal is tested as many times as needed to confirm the results. In response to a question by Representative Bruce, Department personnel stated that the old depopulation administrative regulation provided that if a reactor is identified on a farm the whole herd must be depopulated. This new administrative regulation allows farms with one reactor to be tested to determine if the brucellosis is from a vaccine rather than the disease. If the positive reactor is from vaccine, the herd will not be condemned.

Representative Allen asked if the Department could assist farmers in assuring that they get full slaughter price for their brucellosis infected cattle. He stated that farmers are getting hurt at the slaughter market because of brucellosis in the cattle. Department personnel pointed out that the meat of cattle infected with brucellosis is perfectly fine. Representative Allen pointed out that cattle buyers are using brucellosis as an excuse to give a lower slaughter price for a farmer's cattle. Department personnel stated that the price per pound of the

meat should be the same. It was further pointed out that the Department has an indemnity program to help farmers when their herd must be depopulated but that the Department has nc control over the market price of the cattle.

Senator Huff asked if the Department could announce at a cattle sale that meat which is infected with brucellosis is perfectly good. Department personnel stated that buyers already know there is nothing wrong with the meat but the Department could make some kind of announcement.

Representative Allen asked how long a farmer must wait to bring a cow back to market if the farmer has had his cattle tested for brucellosis at the market. Department personnel stated that the farmer may bring his animals back to the market for sale the very next day. The Department pointed out that the cow must be retested when she is sold, but there is no restriction on how soon she can be sold at the market. Department personnel stated that a complete herd test on the farm is good for 30 days.

Representative Allen pointed out that he just wanted to see farmers get a fair price for their cattle. He felt that buyers seem to want to do anything they can to lower the price of cattle they buy.

Kentucky Grain Insurance and Grain Dealers

302 KAR 34:060. Criteria for maintaining license under forward pricing contracts. The administrative body amended this administrative regulation to: (1) Add KRS 251.440 to the STATUTORY AUTHORITY section; (2) Add an "Applicability" section; and (3) Delete "will" and insert "shall" in line 1 of Section 4, pursuant to KRS 13A.222(4)(b).

ARRS staff pointed out that: (1) Acts 1992, Chapter 76, Section 1(4) appears to provide that all grain establishments and producers may waive payment from the Grain Insurance Fund upon execution of a waiver; (2) However, Section 1(4) provides that only "licensed warehouse establishments" and producers may waive payment; and (3) The apparent conflict in the statute should be resolved in the next regular session of the General Assembly.

Staff further pointed out that Section 4 requires that all grain establishments shall carry insurance to cover losses of grain due to combustion, fire, tornado and lightning. KRS 251.440 requires grain warehouses to carry the insurance set out in Section 4 but there is no provision requiring grain dealers to carry this type of insurance. The grain insurance law does require the fund to be reimbursed in the event of loss.

The subcommittee approved a motion to request LRC to refer the waiver and insurance issue to the appropriate legislative committee for possible amendment and clarification in the next session of the General Assembly.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Strip Mining of Coal

405 KAR 1:007. Termination and reassertion of jurisdiction. David Rosenbaum and Jody Curry appeared before the Subcommittee to represent the Cabinet. On request of the Natural Resources and Environmental Protection Cabinet, (1) Section 1 is amended a follows: after the words "shall terminate when", insert the words ": (1) The cabinet has determined in writing that all requirements imposed under this chapter and KRS Chapter 350 have been successfully completed; or (2) If a performance bond was required," before the words "the cabinet has made a final decision"; (2) Section 2, subsection (1) is amended as follows: after the words "bond release decision", insert the words "or written determination referred to in Section 1 of this administrative regulation" before the words "was based upon fraud".

Surface Effects of Underground Coal Mining

405 KAR 3:007. Termination and reassertion of jurisdiction. On request of the Natural Resources and Environmental Protection Cabinet, (1) Section 1 is amended a follows: after the words "shall terminate when", insert the words ": (1) The cabinet has determined in writing that all requirements imposed under this chapter and KRS Chapter 350 have been successfully completed; or (2) If a performance bond was required," before the words "the cabinet has made a final decision"; (2) Section 2, subsection (1) is amended as follows: after the words "bond release decision", insert the words "or written determination referred to in Section 1 of this administrative regulation" before the words "was based upon fraud".

Corrections Cabinet: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Jack Damron, staff attorney, represented the department, and offered amendments to conform these regulations to KRS Chapter 13A drafting requirements. Incorporated material KSP 25-10-01 was amended by inserting on page 2 at C. "Upon release of the inmate, the Records Office shall follow the notification procedure required in KRS 197.170. D."

501 KAR 6:140. Bell County Forestry Camp. Incorporated material BCFC 13-18-01 was amended to add 29 CFR Part 1910.10000-1500 to the references.

Transportation Cabinet: Office of Aeronautics: Airport Zoning Commission

602 KAR 50:010. Definitions Relating to 602 KAR 50. This administrative regulation was amended to delete the following definitions pursuant to KRS 13A.222(4)(d): Section 2(3) "Airport" found in KRS 183.011(5); Section 2(14) "Permit" found in KRS 183.011(18); and Section 2(15) "Person" found in KRS 183.012(5).

Section 2(13) defines "Navigable airspace". This term is defined in KRS 183.011(15). However, KRS 183.011(15) specifically provides that the Cabinet may further define "navigable airspace" by administrative regulation or pursuant to federal regulation. The Cabinet amended the definition of "Navigable airspace" to include a reference to KRS 183.011(15).

The tiering statement did not comply with KRS 13A.210(1) because it did not fully explain why tiering was not used. The Cabinet agreed to amend the tiering statement as requested, by stating that the "equal protection" and "due process" clause of the fourteenth amendment of the United States Constitution and Section 2 and 3 of the Kentucky constitution might be violated if this administrative regulation did not apply equally to all regulated entities.

602 KAR 50:090. Permit application procedures. This administrative regulation was amended to insert the word "administrative" before "regulation" pursuant to KRS 13A.010(2).

Education and Humanities Cabinet: Department of Education: Office of District Support Services: General Administration

702 KAR 1:035. Group health and life insurance. This administrative regulation was amended in July 1992 and had been deferred. At this meeting, it was amended to: (1) Move the definition for "Unpaid leave" to Section 1; and (2) Clarify that an employee who has been on leave without pay and who returns to work at least one day of the next consecutive month, is eligible for reimbursement of health insurance by the state.

Office of Learning Program Development: Instructional Services

704 KAR 3:345. Evaluation guidelines. This administrative regulation was amended to conform to the drafting requirements of KRS Chapter 13A relating to terminology, format and language.

Wayne Young, Executive Director for the Kentucky Association of School Administrators, objected to Section 7 that permitted a teacher to appeal a favorable evaluation on the grounds that the teacher did not receive the highest possible rating. He stated that this exceeded excess of statutory authority.

Department personnel stated that Section 7 provides that, for appeals to the local Evaluation Appeals Panel, each local evaluation plan shall provide for: (1) a right to a hearing on every appeal; (2) a reasonable opportunity before a hearing for all parties to adequately review documents presented to the Evaluation Appeals Panel; and (3) a right for the teacher to be represented.

Department personnel stated that this section was recommended by three members of the State Board of Elementary and Secondary Education who serve as a State Evaluation Appeals Panel on teacher evaluation appeals. Department personnel added that this section was required because: (1) objections had been raised to the dismissal of teacher appeals by local appeals panels without a hearing on such appeals; (2) this violated constitutional due process requirements; (3) the Kentucky Supreme Court, in Alfred Thompson v. Henderson County Board of Education, 91 S.C. 705 D.G., held that teachers are entitled to due process hearings, if a teacher evaluation is going to be used as the basis for a dismissal.

Representative Bruce asked the Department to inform the Subcommittee within the next year of the number of appeals under this administrative regulation. He stated that he anticipates this appeals process will not be used to the extent Mr. Young expects.

Chairman Kerr asked if there is already an effective appeals process in place. Department personnel stated that an appeals process is mandated by statute and requires the State Board to promulgate an administrative regulation to establish the "process".

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Mining

805 KAR 5:030. Prohibition against working or traveling under unsupported roof; penalties. Eugene Attkisson, General Counsel for the Department, offered an amendment to make several changes, "none of which alters its substance" to the regulation, to comply with the drafting requirements of KRS Chapter 13A.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:120. Water supply and distribution. This administrative regulation was amended to: (1) Delete "standards" and insert "specifications"; and (2) insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2).

815 KAR 20:130. House sewers and storm water piping; methods of installation. This administrative regulation was amended to insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2).

Hazardous Materials

815 KAR 30:010. LP gas license; financial responsibility required. This administrative regulation was amended to insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2).

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:035. Inactive status registration. Section 1, "Definitions", was amended to comply with KRS 13A.222(4)(a).

Health Services and Facilities

902 KAR 20:004. Certificate of need process. This administrative regulation was amended to conform to the drafting requirements of KRS Chapter 13A relating to terminology, format, language and forms incorporated by reference.

In response to questions by members of the Subcommittee, John Gray, general counsel for the Interim Office of Health Planning & Certification, explained the Governor's reorganization of the offices and procedures related to certificate of need, licensure, and appeal.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees. Representative Allen and other members of the Subcommittee questioned the increase in fees and asked Board personnel to explain the need for the increase. Board personnel stated that there were insufficient funds in the Board's budget for operation; expenses had increased, especially the cost of examinations that the Board had to administer and the salary costs of evaluators; the source of its appropriation was the fees it charged; and the fee increases were within the maximums permitted by statute. The Subcommittee approved a motion that this administrative regulation was deficient. After a discussion of other state agency administrative regulations that contained fee increases, Senator Quinlan moved that this administrative regulation be reconsidered; motion passed. Senator Quinlan then moved that this administrative regulation complied with statutory authority, was not deficient, and would not be subject to expiration; motion passed. Senator Huff and Representative Allen requested that their objections to this administrative regulation be noted.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:060. Renewals. Board personnel agreed that this administrative regulation repeated or summarized KRS 323A.100, 323A.120, and 323A.130, in violation of KRS 13A.120(2); and that the Board would file a repealer administrative regulation.

Board of Respiratory Care

201 KAR 29:020. Code of ethics; unprofessional conduct.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Air Quality - General Administrative Procedures

401 KAR 50:037. Emissions fee.

Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:030. Applicability.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:060. Northpoint Training Center.

Transportation Cabinet: Department of Vehicle Regulation: Transportation of Solid Waste

601 KAR 40:020. Application for license to operate vehicles transporting municipal solid waste. Sandy Pullen appeared before the Subcommittee representing the Cabinet. Chairman Kerr asked Ms. Pullen if it were true that some licensees were being regulated by two state agencies. Ms. Pullen told the Subcommittee that septic tank sludge haulers and waste treatment sludge haulers were also being regulated by the Cabinet for Human Resources. She stated that the Transportation Cabinet was certainly willing to give up regulation of this group if applicable statutes were amended to relieve the Cabinet from this responsibility. She further stated that the Cabinet for Human Resources regulation of this group was sufficient.

On motion by Senator Quinlan and second, the Subcommittee approved a motion to request LRC to forward to the appropriate committee the need for this jurisdictional dispute to be resolved by legislation in the 1994 General Assembly.

Chairman Kerr also asked Ms. Pullen for an interpretation of the new language of section 9 (1) (b) "Under the provisions of its existing license," concerning the transfer of ownership of assets of a licensee. Ms. Pullen explained that if someone who was licensed purchased the assets of another licensee, that purchaser could operate the business of the seller of the assets, after compliance with certain provisions of this regulation. She further stated that was as far as the state looked into that matter, explaining that the state's function concerning licensing and businesses was accomplished during the initial licensing.

Office of Aeronautics: Airport Zoning Commission

602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.

602 KAR 50:050. Airport zoning map. The tiering statement did not comply with KRS 13A.210(1) because it did not fully explain why tiering was not used. The Cabinet agreed to amend the tiering

statement as requested, by stating that the "equal protection" and "due process" clause of the fourteenth amendment of the United States Constitution and Section 2 and 3 of the Kentucky constitution might be violated if this administrative regulation did not apply equally to all regulated entities.

602 KAR 50:060. Construction within jurisdictional airspace.

602 KAR 50:070. Standards for determining obstructions.

602 KAR 50:100. Standards for marking or lighting structures.

602 KAR 50:110. Valid permit period for alteration or construction of a structure.

602 KAR 50:120. Hearing procedures. The tiering statement did not comply with KRS 13A.210(1) because it did not fully explain why tiering was not used. The Cabinet agreed to amend the tiering statement as requested, by stating that the "equal protection" and "due process" clause of the fourteenth amendment of the United States Constitution and Section 2 and 3 of the Kentucky constitution might be violated if this administrative regulation did not apply equally to all regulated entities.

Department of Highways: Maintenance

603 KAR 3:060. Advertising devices on interstate parkway and federal-aid primary highways. Chairman Kerr pointed out that this administrative regulation incorporates Definitions from 603 KAR 3:010, 603 KAR 3:020, 603 KAR 4:025 which were found deficient during quadrennial review. Cabinet personnel stated that 603 KAR 3:010, 603 KAR 3:020, 603 KAR 4:025 were found deficient not only because they repeated statutory definitions, but also because a definition was changed by the General Assembly but was not then changed in the administrative regulation.

Chairman Kerr stated that, "Advertising device," "Commercial or industrial area," "Federal-aid primary highway," "Interstate highway" and "Urban area" are found both in KRS 177.830 and in the Cabinet's "State/Federal Cooperative Agreement".

Cabinet personnel stated that they put all requirements for advertising devices on interstate highways in a handbook as a matter of convenience for employees. "The State/Federal Cooperative Agreement" has also been incorporated by reference in this administrative regulation.

It was also pointed out by Subcommittee staff that the standards in this administrative regulation are more stringent than the Federal minimum requirement. Cabinet personnel stated that the Cabinet: (1) has received over $2.5 million dollars because of this cooperative agreement; and (2) If it does not comply with this cooperative agreement, it will lose funds and may be forced to reimburse any money already received.

The subcommittee approved this administrative regulation and approved a motion to reconsider it in January 1993. The Subcommittee instructed Subcommittee staff and the Cabinet to attempt to resolve the conflict.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

Department of Housing, Buildings and Construction: Hazardous Materials

815 KAR 30:041. Repeal of 815 KAR 30:040. In response to a question by Representative Bruce, Cabinet personnel stated that this administrative regulation was no longer necessary, because 815 KAR 30:010 now contains the provisions found in this administrative regulation.

Cabinet for Human Resources: Department for Medicaid Services: Medicaid Services

The tiering statement in the following two administrative regulations did not comply with KRS 13A.210(1) because it did not fully explain why tiering was not used. The Cabinet agreed to amend the tiering statement as requested, by stating that the "equal protection" and "due process" clause of the fourteenth amendment of the United States Constitution and Section 2 and 3 of the Kentucky constitution might be violated if this administrative regulation did not apply equally to all regulated entities.

907 KAR 1:013. Payments for hospital services.

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

The following regulations were deferred to the November meeting upon agreement by the promulgating agency and the Subcommittee:

Kentucky Higher Education Assistance Authority: Kentucky Higher Education Assistance Authority

11 KAR 4:020. Disapproval, assessment of liabilities, limitation, suspension or termination of eligibility to participate in authority programs.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

405 KAR 7:091. General practice provisions.

405 KAR 7:092. Administrative hearings and assessment conferences.

Permits

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

Inspection and Enforcement

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

405 KAR 12:020. Enforcement.

Performance Standards for Surface Mining Activities

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

Performance Standards for Underground Mining Activities

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

Special Performance Standards

405 KAR 20:001. Definitions for 405 KAR Chapter 20.

Areas Unsuitable for Mining

405 KAR 24:001. Definitions for 405 KAR Chapter 24.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:110. Permits for moving overdimensional house trailers.

Department of Insurance: Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:150. Human immunodeficiency virus education, initial professional licensure. Pursuant to KRS 13A.290(4), this administrative regulation was deferred because no Cabinet personnel were present to speak for the administrative regulation.

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

Labor Cabinet: Occupational Safety and Health

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000 - 1910.1500. This administrative regulation was found deficient by the Subcommittee at its September 4, 1992 meeting. The Subcommittee instructed Subcommittee staff, regulated entities, and the Cabinet to meet in an attempt to resolve the issues raised. A complete discussion of the

issues raised may be found in the September minutes published in the October 1, 1992, Administrative Register, and in the LRC Report filed with the Commission.

At this meeting, Subcommittee staff reported that all parties were in agreement on the issues raised: (1) the Statement of Consideration must be complete when filed with LRC, and cannot impose conditions, standards or otner requirements that do not appear in the administrative regulation; (2) conditions, standards, other requirements, and interpretative guidelines must be set out in the administrative regulation or incorporated by reference; and must be used as a standard to determine whether an item complies with the administrative regulation; (3) the CDC standards or definitions have not been incorporated by reference and are not established by this administrative regulation; (4) standards governing bloodborne pathogens, regulated waste definitions and requirements, and scope of practice established by the Cabinet were not required to be identical to other such standards established by other administrative bodies; (5) a definition must be written so as to be applicable to facts governed by it; the specific facts of every situation are not required to be contained within an administrative regulation; compliance is determined by applying the definition and other requirements to the facts; (6) regulated waste is defined by this administrative regulation and not by material or guidelines extraneous to this administrative regulation; (7) infectious control nurses working under a protocol meet the definition of those "whose legally permitted scope of practice allows" independent performance of required activities; (8) The Board of Nursing will determine whether required procedures and evaluations are within the scope of practice of registered or licensed practical nurses, and inform the Subcommittee of its determination; and (9) regulated entities will meet with the Cabinet to discuss a number of fact situation in order to determine whether: (a) the administrative regulation adequately provides clear and comprehensive standards; and (b) additional amendments are required.

The Subcommittee reconsidered this administrative regulation, and approved a motion that this administrative regulation was not deficient and is not subject to expiration.

The Subcommittee adjourned at 11:45 a.m. until November 4, 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 AGRICULTURE AND NATURAL RESOURCES
Meeting of September 23, 1992

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, September 23, 1992, and submits this report:

The Committee determined that the following Natural Resources and Environmental Protection administrative regulations comply with KRS Chapter 13A:

401 KAR 31:010
401 KAR 31:040
401 KAR 31:060
401 KAR 31:170
401 KAR 34:020
401 KAR 34:050
401 KAR 34:060
401 KAR 34:070
401 KAR 34:190
401 KAR 35:020
401 KAR 35:050
401 KAR 35:070
401 KAR 35:190
401 KAR 36:030
401 KAR 37:010
401 KAR 37:030
401 KAR 37:040
401 KAR 37:050
401 KAR 38:010
401 KAR 38:020
401 KAR 38:040
401 KAR 38:050
401 KAR 38:060
401 KAR 38:070
401 KAR 49:009E
401 KAR 49:011
401 KAR 49:040

The Committee determined that the following Department of Fish and Wildlife Resources administrative regulations comply with KRS Chapter 13A:

301 KAR 1:015
301 KAR 1:020
301 KAR 1:060
301 KAR 1:075
301 KAR 1:085
301 KAR 1:160
301 KAR 1:200
301 KAR 3:090

The Committee reconsidered Department of Fish and Wildlife Resources administrative regulation 301 KAR 3:022 previously found deficient by the Committee. The Committee determined that the administrative regulation is not deficient and does comply with KRS Chapter 13A.

The meeting adjourned September 23, 1992, at 2:55 p.m.

INTERIM COMMITTEE ON EDUCATION
Meeting of October 1, 1992

The Interim Joint Committee on Education met on October 1, 1992, and approved the following administrative regulations:

11 KAR 4:060
11 KAR 12:010
11 KAR 12:020
11 KAR 12:030
11 KAR 12:040
11 KAR 12:050
11 KAR 12:060
11 KAR 12:070
11 KAR 12:081
11 KAR 12:090
701 KAR 5:035
701 KAR 5:085
702 KAR 3:190
702 KAR 3:250
702 KAR 5:120
702 KAR 7:065
704 KAR 20:660

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

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 1992 bound Volumes were published.

KRS Index E9

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 E16

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

VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

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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
Replaced		9-14-92

ORDINARY REGULATIONS:

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201 KAR 10:050		
Amended	3497	(See VOLUME 19)
201 KAR 10:060		
Amended	3209	
201 KAR 18:040		
Amended	3210	(See VOLUME 19)
201 KAR 18:075	3271	
Withdrawn		10-1-92
803 KAR 2:320		
Amended	3529	10-7-92
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.

1 KAR 6:020E	1048	9-18-92
11 KAR 4:020E	677	7-9-92
32 KAR 1:010E	859	8-19-92
32 KAR 2:020E	1048	10-6-92
32 KAR 2:030E	1049	10-6-92
32 KAR 2:040E	1050	10-6-92
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32 KAR 2:060E	1052	10-6-92
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32 KAR 2:080E	1054	10-6-92
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200 KAR 14:091E	364	7-14-92
201 KAR 2:105E	862	8-18-92
201 KAR 10:050E	4	5-18-92
301 KAR 2:044E	864	8-18-92
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603 KAR 3:060E	368	7-8-92
603 KAR 5:110E	369	7-15-92
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704 KAR 3:303E	7	6-12-92
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704 KAR 3:405E	1061	9-22-92
704 KAR 3:440E	7	5-22-92
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780 KAR 3:020E	9	6-11-92
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901 KAR 5:050E	372	7-2-92
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902 KAR 10:021E	372	7-2-92
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902 KAR 10:035E	702	7-24-92
902 KAR 10:060E	372	6-30-92
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902 KAR 10:121E	373	6-30-92
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902 KAR 10:130E	373	6-30-92
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902 KAR 20:004E	374	7-10-92
902 KAR 45:110E	378	6-30-92
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902 KAR 45:120E	379	6-30-92
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902 KAR 100:012E	10	6-4-92
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904 KAR 2:006E	380	7-10-92
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905 KAR 2:100E	703	7-24-92
906 KAR 1:110E	12	5-22-92
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907 KAR 1:013E	14	6-4-92
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907 KAR 1:025E	706	7-24-92

ORDINARY REGULATIONS:

1 KAR 3:006	1012	
1 KAR 6:020	1231	
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11 KAR 3:100		
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11 KAR 4:015	1014	

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11 KAR 5:130		
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11 KAR 11:020		
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