ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 19, NUMBER 6
TUESDAY, DECEMBER 1, 1992

Administrative Regulation Review Subcommittee, Dec. Agenda 1295
Regulation Review Procedure 1297

Emergency Regulations Now In Effect:
Board of Physical Therapy 1299
Petroleum Storage Tank Environmental Assurance Fund 1299
Corrections - Class D Felons 1310
Human Resources 1313
As Amended:
Auditor of Public Accounts 1337
Kentucky Employees' Retirement System 1337
Board of Pharmacy 1340
Fish and Wildlife Resources 1340
NREPC - Surface Mining 1345
Justice - Community Corrections 1365
Transportation 1367
Education 1370
Kentucky State University 1379
Insurance 1379
Housing, Buildings and Construction 1383
Amended After Hearing:
Workers' Compensation Board 1396
Proposed Amendments Received Through Noon, November 15, 1992:
Kentucky Employees' Retirement System 1398
Board of Physical Therapy 1402
Fish and Wildlife Resources 1403
Corrections 1406
Transportation 1410
Education 1418
Workforce Development Cabinet 1428
Workers' Compensation Board 1436
Human Resources 1444
Proposed Regulations Received Through Noon, November 15, 1992:
Board of Pharmacy 1462
State Interagency Council, Services to Children with Emotional Disability 1464
NREPC - Air Quality 1466
Petroleum Storage Tank Environmental Assurance Fund 1471
Corrections - Class D Felons 1488
Education 1492
Workers' Compensation Board 1495
Human Resources 1500
Nov. Minutes of the Administrative Regulation Review Subcommittee 1507
Other Committee Reports 1512

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates F2
KRS Index F10
Subject Index F18

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on December 1 and 2, 1992. See **tentative** agenda on pages 1295-1297 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1992 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board or Agency		Office, Division, or Major Function	Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
c 1992 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator John A. "Eck" Rose
Senate President Pro Tem

Representative Donald J. Blandford
Speaker of the House

Senate and House Members

Senator Charles W. Berger
Assistant President Pro Tem

Representative Pete Worthington
Speaker Pro Tem

Senator Joe Wright
Majority Floor Leader

Representative Gregory D. Stumbo
Majority Floor Leader

Senator John D. Rogers
Minority Floor Leader

Representative Tom Jensen
Minority Floor Leader

Senator David K. Karem
Majority Caucus Chairman

Representative Jody Richards
Majority Caucus Chairman

Senator Art Schmidt
Minority Caucus Chairman

Representative Clarence Noland
Minority Caucus Chairman

Senator Fred Bradley
Majority Whip

Representative Kenny Rapier
Majority Whip

Senator Tom Buford
Minority Whip

Representative Jim Zimmerman
Minority Whip

Vic Hellard, Jr. Director
Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative Tom Kerr, Chairman
Senator Gene Huff
Senator Pat McCuiston
Senator William L. Quinlan
Representative Woody Allen
Representative James E. Bruce
Representative James B. Yates

Staff

Patrice Carroll
Susan Eastman
O. Joseph Hood
Peggy Jones
Gregory Karambellas
Donna Pierce
Tom Troth
Susan Wunderlich

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - December 1, 1992 at 2 p.m.
Room 131, State Capitol Annex

LEGISLATIVE RESEARCH COMMISSION

Capital Planning Advisory Board

1 KAR 6:020 & E. Policies and procedures.(Repeals 1 KAR 6:010)

DEPARTMENT OF STATE
Registry of Election Finance

Practice and Procedure

32 KAR 2:020 & E. General provisions.
32 KAR 2:030 & E. Complaints; internally-generated matters. (Repeals 32 KAR 2:010)
32 KAR 2:040 & E. Preconciliation procedures.
32 KAR 2:050 & E. Conciliation.
32 KAR 2:060 & E. Advisory opinions.
32 KAR 2:070 & E. Fundraiser registration.
32 KAR 2:080 & E. Political activities of registry members and employees.

TEACHERS' RETIREMENT SYSTEM

General Rules

102 KAR 1:185. Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislator's Retirement Plan, Judicial Retirement System, and Teachers' Retirement System.

BOARD OF CLAIMS

Board of Claims

108 KAR 1:010. Board operation and claim procedure. (Public Hearing Held in September) (Deferred from November)

FINANCE AND ADMINISTRATION CABINET

Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel. (Deferred from November)

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:195. Impaired pharmacists. (Deferred from November)
201 KAR 2:210. Patient records and patient counseling.

Kentucky Licensing Board for Specialists in Hearing Instruments

201 KAR 7:015. Fees.
201 KAR 7:075. Continuing education requirements.

Board of Nursing

201 KAR 20:400. Delegation of nursing tasks to unlicensed persons.

Board of Chiropractic Examiners

201 KAR 21:095. Licensure and registration of persons performing peer review.
201 KAR 21:100. Minimum standards for recordkeeping/itemized statements.

Board of Examiners of Social Work

201 KAR 23:020. Examination; fee.

Board of Respiratory Care

201 KAR 29:015. Fees.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division of Waste Management

Solid Waste Planning

401 KAR 49:220. Waste tire trust fund loan program.
401 KAR 49:230. Waste tire trust fund grant program.

Department for Environmental Protection
Division for Air Quality

General Administrative Procedure

401 KAR 51:010. Attainment status designations.
401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

New Source Standards

401 KAR 59:175. New service stations.
401 KAR 59:430. Standards for performance for industrial-commercial steam generating units.
401 KAR 59:460. Standards for performance for sulfuric acid plants. (Repeals 401 KAR 59:036)
401 KAR 59:635. Standards for performance for the graphic arts industry: publication rotogravure printing. (Repeals 401 KAR 59:214.)
401 KAR 59:675. Standards for performance for new residential wood heaters.
401 KAR 59:705. Standards for performance for volatile organic compound (VOC) emissions from the synthetic organic chemical

manufacturing industry (SOCMI) air oxidation unit processes.

401 KAR 59: 725. Standards for performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

401 KAR 59:740. Standards for performance for VOC emissions from petroleum refinery wastewater systems.

401 KAR 59:745. Standards for performance for new magnetic tape coating facilities.

401 KAR 59:750. Standards for performance for industrial surface coating: surface coating of plastic parts for business machines.

401 KAR 59:755. Standards for performance for polymeric coating of supporting substrates facilities.

Existing Source Standards

401 KAR 61:085. Existing service stations.

General Standards of Performance

401 KAR 63:031. Leaks form gasoline tank trucks.

JUSTICE CABINET

Peace Officer Death Benefits

500 KAR 1:010. Definitions.

500 KAR 1:020. Filing and processing of death benefit claims.

500 KAR 1:030. Request for hearing.

Department of Corrections

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:120. Blackburn Correctional Complex.

501 KAR 6:130. Western Kentucky Correctional Complex.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - December 2, 1992 at 10 a.m.
Room 131, State Capitol Annex

TRANSPORTATION CABINET

Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

EDUCATION AND HUMANITIES CABINET

Education Professional Standards Board

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

704 KAR 20:165. Qualifications for professional school positions.

704 KAR 20:210. Substitute teachers.

704 KAR 20:585. Procedures for certificate revocation. (Repeals 704 KAR 20:580.)

NORTHERN KENTUCKY UNIVERSITY

Board of Regents

760 KAR 1:010. Acquisition and disbursement of funds.

760 KAR 1:020. Annual audit.

760 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedure.

760 KAR 1:040. Delegation of financial management responsibility.

760 KAR 1:050. Issuance of bonds.

760 KAR 1:060. Fund for excellence.

LABOR CABINET

Workers' Compensation Board

803 KAR 25:091. Workers' compensation hospital fee schedule. (Public Hearing Held in October)

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Miner Training, Education and Certification

805 KAR 7:030. Annual retraining program.

Department of Insurance

Health Insurance Contracts

806 KAR 17:081. Minimum standards for long-term insurance policies. (Repeals 806 KAR 17:080)

Public Service Commission

Utilities

807 KAR 5:001. Rules of procedure.

Department of Financial Institutions

Administration
808 KAR 1:130. Loan production offices.
Savings and Loan
808 KAR 7:040. Acquisition of savings and loan associations.
Securities
808 KAR 10:270. Registration exemption for securities listed on the Chicago Board Options Exchange.
808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, small corporate offering registration.
Thrift Institutions
808 KAR 13:010. Examination fees for check cashing licensees; prohibited advertising.

Kentucky Racing Commission

Thoroughbred Racing
810 KAR 1:018. Medication; testing procedure.
810 KAR 1:025. Licensing thoroughbred racing.
810 KAR 1:027. Entries, subscriptions and declarations.
Harness racing
811 KAR 1:180. Personnel to be licensed; fees.
Quarter horse, Appaloosa and Arabian Racing
811 KAR 2:020. Licensing procedures.

Department of Housing, Buildings and Construction

Kentucky Building Code
815 KAR 7:025. Kentucky building code. (Repeals 815 KAR 7:020.)
Standards of Safety
815 KAR 10:040. Fire prevention code. (Repeals 815 KAR 10:020.)
Plumbing
815 KAR 20:071. Storage and installation of Schedule 40, ABS and PVC plastic pipe and fittings.
815 KAR 20:090. Soil, waste and vent systems.
815 KAR 20:110. Traps and clean-outs.
Manufactured Homes and Recreational Vehicles
815 KAR 25:010. Manufactured homes.
815 KAR 25:030. Certified installers of manufactured housing.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Health Services and Facilities
902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services.
902 KAR 20:330 & E. Psychiatric residential treatment facilities.

Department for Social Insurance

Public Assistance
904 KAR 2:016 & E. Standards for need and amount; AFDC.
904 KAR 2:116 & E. Low income home energy assistance program.
Food Stamp Program
904 KAR 3:050. Additional provisions.

Department for Social Services

Child Welfare
905 KAR 1:350. Family preparation section.

OTHER BUSINESS

Department of Agriculture

Kentucky Grain Insurance and Grain Dealers
302 KAR 34:060. Criteria for maintaining license under forward pricing contracts.

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
201 KAR 22:135E

The Board of Physical Therapy staff made typing errors when changing the format of 201 KAR 22:135 after filing proposed amendments to the regulation. These include an incorrect word, "before" rather than "after" which, if left as is, completely alters the periods of fee prorating within a licensure biennium. The errors also include an incorrect application fee which, as listed, could place the board in an awkward fiscal position. The regulation as amended with these typing errors became effective 9/8/92. The board had filed proposed amendments to 201 KAR 22:135 concerning fees with the Regulations Compiler on 5/20/92. These amendments reflected the increases in the cost of each licensure examination to the agency which are passed on to those applying to take the examination. The changes in the examination application fee in the second year of the licensure biennium was correctly stated in the 5/92 proposed amendments, increasing from "$180" to "$190". These proposed amendments were published in the July Administrative Register and the agency had no requests for a hearing. Following a review of this regulation and proposed amendments by LRC legal staff, the agency was directed to alter the manner in which the regulation was written to be in compliance with KRS Chapter 13A. When typing the new format, board staff inadvertently substituted the figure "$100" for "$190" when typing the fee in Section 3(1)(b). In addition, the word "before" vs "after" was incorrectly typed in Section 3(2) and (3). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 19, 1992.

BRERETON C. JONES, Governor
GEORGIA KING, Chairman

GENERAL GOVERNMENT CABINET
Board of Physical Therapy

201 KAR 22:135E. Fees.

RELATES TO: KRS 327.040(12), 327.050
STATUTORY AUTHORITY: KRS 327.040
EFFECTIVE: November 2, 1992
NECESSITY AND FUNCTION: The purpose of this regulation is to establish fees required of applicants for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification by endorsement, examination, reinstatement, renewal or reexamination.

Section 1. Payment of Fees. (1) A renewal application may be paid by personal check.
(2) Other application fees shall be:
(a) Paid by:
1. Cashier's check; or
2. Certified check; or
3. Money order; and
(b) Made payable to the Kentucky State Treasurer; and
(3) Application fees shall not be refundable.

Section 2. Fees. (1) Except as provided by Section 3 of this administrative regulation, the fee for:
(a) Physical therapist licensure and for physical therapist's assistant certification by examination shall be $230;
(b) Endorsement application shall be $140;
(c) Reinstatement application shall be $105.
(2) The renewal application fee shall be $80.
(3) The application fee for reexamination shall be $147.50.
(4) If an applicant failed to take or complete an examination for which he registered, he shall pay an additional $147.50 if he notifies the board that he wishes to register for another examination.

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

GEORGIA KING, Chairman
APPROVED BY AGENCY: October 16, 1992
FILED WITH LRC: November 2, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:050E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators to qualify for the expanded eligibility under the fund by providing definitions for essential terms. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency

regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:050E. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: November 9, 1992

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Petroleum Storage Tank Environmental Assurance Fund Commission to adopt regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This regulation defines essential terms used in connection with the regulations of the commission in this chapter. 1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund. This regulation repeals the prior regulations of the commission.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context terms in KRS Chapter 224 and in the Petroleum Storage Tank Environmental Assurance Fund Commission regulations shall have the meanings given in this regulation.

(1) " Assets" shall have the meaning in KRS 224.60-120(3);

(2) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(3) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;

(4) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(5) "Claim" shall have the meaning in KRS 224.60-115(4);

(6) "Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;

(7) "Corrective action" shall have the definition in KRS 224.60-115(5);

(8) "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(9) "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(10) "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes or storage of petroleum for use;

(11) "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(12) "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(13) "Entry level" means the amount of financial responsibility determined by the commission to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(14) "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(15) "Facility" shall have the meaning in KRS 224.60-115(7);

(16) "Federal regulation" shall have the meaning in KRS 224.60-115(8);

(17) "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(18) "Guarantor" shall have the meaning in KRS 224.120(4);

(19) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(20) "Net worth" shall have the meaning in KRS 224.60-120(3);

(21) "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(22) "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

(23) "Nonretail facility" means a facility that does not sell petroleum products from petroleum storage tanks to the general public;

(24) "Occurrence" shall have the meaning in KRS 224.115(12);

(25) "Original invoice" means the original or a duplicate original of an invoice;

(26) "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(15);

(27) "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(17);

(28) "Ranking system" means the system for determining financial ability and extent of environmental harm established by these regulations;

(29) "Release" shall have the meaning in KRS 224.60-115(19);

(30) "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(31) "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(32) "Release detection" means determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it;

(33) "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the regulations of the cabinet;

(34) "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

Section 2. These definitions are intended to be consistent with the definition of terms in the waste management regulations and in applicable federal regulations.

Section 3. 415 KAR 1:010, 415 KAR 1:020, 415 KAR 1:030 and 415 KAR 1:040 are repealed.

C. GREGORY HIGDON, Chairman
APPROVED BY AGENCY: November 2, 1992
FILED WITH LRC: November 9, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:060E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators to demonstrate the financial responsibility required by federal regulations by establishing eligibility requirements for the financial responsibility account of the fund. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:060E. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
EFFECTIVE: November 9, 1992
NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission prior to the effective date of this regulation pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)(a), (b), (d), (e) and (f) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility for the facility pursuant to 415 KAR 1:020 (1991) shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently or temporarily closed in compliance with 401 KAR 42:070;

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150; and

(f) Have demonstrated financial responsibility in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991);

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission a copy of the Eligibility and State Financial Responsibility Affidavit form dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

(3) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for

participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet within twenty-four (24) hours of the discovery of the release as required by 401 KAR 42:050. For the purpose of potential eligibility for the fund, in no event shall the report of the release be made to the cabinet more than thirty (30) days after discovery.

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at $10,000 per occurrence for taking corrective action and $10,000 per occurrence for compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action and $25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a direct or indirect controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from unregistered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility may be deemed ineligible to receive payment from the financial responsibility account in the event of a release if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation. An owner or operator may be determined eligible for payment of the costs of corrective action if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet. The owner or operator shall not be eligible for payment of the costs of third-party liability for releases occurring before the facility is brought back into compliance.

(3) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(4) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(5) A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.

(6) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) may be eligible to participate in the petroleum storage tank account for facilities that do not qualify for eligibility in the financial responsibility account if the eligibility requirements of 415 KAR 1:070 are met.

(7) Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is $1,500,000, or less, or the payment of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the payment of claims until the unobligated balance is greater than $1,500,000. Claims approved for payment by the commission at the time of suspension shall be paid in accordance with the date of final approval of the claims when the suspension is lifted.

C. GREGORY HIGDON, Chairman
APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 9, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:070E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators to qualify for eligibility in the petroleum storage tank account which will provide eligibility to tanks not previously eligible for participation in the fund. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:070E. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: November 9, 1992

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed before January 1, 1974 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(d) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the requirements of Section 2 of this administrative regulation are met;

(e) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(f) Costs of corrective action for releases from petroleum storage tanks removed from the ground after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(g) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(h) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at this facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150; and

(c) Submit the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility from the petroleum storage tank account.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b), (c), (d), (e) and (f) of this Administrative Regulation. An owner or operator of a facility of the classes described in Section 1(1)(b), (c), (d), (e) and (f) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(g) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility, or to make a change in service to upgrade the petroleum

storage tanks to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a substance until the upgrade is completed.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(h) of this Administrative Regulation. An owner or operator of facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1)(a) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility was a retail facility and the facility is permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility was a nonretail facility. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or
2. $25,000 for an owner or operator of six (6) or more tanks.

(2)(a) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility, or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or
2. $25,000 for an owner or operator of six (6) or more tanks.

(3)(a) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or more tanks; or
2. $25,000.for an owner or operator of six (6) or more tanks.

(4)(a) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or
2. $25,000 for an owner or operator of six (6) or more tanks.

(5) An owner or operator of a nonretail facility who meets the requirement of 415 KAR 1:090, Section 3(2)(a) as to financial ability may request the commission to waive the payment of an entry level required by this section on the basis of financial hardship, if the facility is taken permanently out of service.

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) The commission may require an owner or operator to pay an entry level for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42, instead of making a determination that the facility is not eligible for participation as provided in paragraph (a) of this subsection.

(2) An owner, operator or contractor may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. The owner or operator shall pay an entry level under the provisions of Section 6(1)(b) of this administrative regulation if the owner or operator:

(1) Failed to provide a method of release detection as required by 401 KAR 42:040 by the applicable date; or

(2) Failed to report a release of petroleum at the facility to the cabinet within thirty (30) days of the initial detection; or

(3) Failed to implement initial abatement measures as required by 401 KAR 42:060 within twenty (20) days of confirmation of a release; or

(4) Failed to comply with the requirements of 401 KAR 42:060 during the performance of site investigation and corrective action; or

(5) Failed to comply with the maintenance and recordkeeping requirements of 401 KAR 42:030 or 42:040.

Section 8. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from unregistered

tanks found during the performance of corrective for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 10. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

C. GREGORY HIGDON, Chairman
APPROVED BY AGENCY: November 2, 1992
FILED WITH LRC: November 9, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:080E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators to submit claims to the commission to receive assistance in the payment of the costs of corrective action. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:080E. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
EFFECTIVE: November 9, 1992
NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

Section 1. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the bid proposal submitted to the owner or operator by the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Documentation to establish that the owner or operator has complied with the administrative regulations of the cabinet.

(2) Commission staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) Commission staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

(b) If the application is determined to be incomplete, commission staff shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within fifteen (15) days of receipt of notice;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by commission staff, the claim shall be denied.

(4) The commission shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment and the amount of payment shall be obligated in the appropriate account.

Section 2. Assistance Agreement. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account may apply for an assistance agreement with the commission to guarantee the payment of eligible costs of corrective action.

(2) Application shall be made on the Assistance Agreement form dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met;

(b) A release from an eligible facility has occurred and has been reported to the cabinet;

(c) The owner or operator has obtained bid proposal for the performance of corrective action from at least three (3) contractors.

(3) If the owner or operator meets the requirements of subsection (2) of this section the commission shall enter into an assistance agreement and establish the amount to be obligated by the appropriate account based upon the approved bid. The assistance agreement may be used as a guarantee of payment to a contractor performing corrective action to the extent of the approved amount.

(4) The assistance agreement may be amended upon application by the eligible owner or operator upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action, and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the commission.

(5) Payment under the terms of the assistance agreement may be

made when the eligible owner or operator submits original invoices of costs incurred under the terms of the approved bid, and the submittal of the certification by the contractor that the costs were consistent with the bid, and necessary to comply with the administrative regulations of the cabinet.

Section 3. Signatures. (1) A claim form or an application for an assistance agreement shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

Section 4. Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 415 KAR 1:110;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied;

(d) The claim is received within one (1) year from completion of the work for which payment is sought.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 5. Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(2) Requests for payment under an assistance agreement may be submitted sixty (60) days following initiation of corrective action, and at sixty (60) days intervals thereafter until completion of the authorized activities. Upon request, the commission may approve interim payments at more frequent intervals. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(3) All payments shall be subject to approval of the commission.

Section 6. Payment Procedures. (1) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in an assistance agreement.

(2) Prior to payment being issued, the eligible owner or operator shall verify that an amount equal to the entry level has been paid by the owner or operator.

Section 7. Eligible Costs. Payment for costs of corrective action shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Removal, treatment, and disposal of petroleum contamination from petroleum storage tank systems, groundwater, and soils contaminated by a release from the petroleum storage tank system;

(d) Performance of site checks, and site investigation to assess the extent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet;

(e) Preparation of corrective action plans;

(f) Necessary monitoring of the environment performed pursuant to the direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(g) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system;

(h) Restoration or replacement of a private or public drinking water supply;

(i) Removal, treatment, dispose of contaminated liquids and soils resulting from corrective action;

(j) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(k) The costs of implementation of corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems if approved by the cabinet;

(l) Costs for replacing of blacktop or concrete if removal was necessary to perform the corrective action;

(m) Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(n) Other costs requested by the applicant and approved by the commission, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs, earth moving equipment, and pumps;

(d) Loss of business, income or profits;

(e) Attorneys fees unless demonstrated to be integral to the performance of corrective action;

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interests on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services.

Section 8. Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 9. Subrogation. Prior to making payment of a claim, the commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

C. GREGORY HIGDON, Chairman
APPROVED BY AGENCY: November 2, 1992
FILED WITH LRC: November 9, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:090E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators to receive priority for payment of the costs of corrective action based upon the extent of environmental harm caused by a release and the financial ability of the owner or operator. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:090E. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
EFFECTIVE: November 9, 1992
NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the commission to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the commission shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the study to be performed for the commission pursuant to KRS 224.60-137 and the administrative regulations to be adopted by the cabinet to establish standards for corrective action for release into the environment from a petroleum storage tank.

(2) Until the study is completed and the administrative regulations establishing standards for corrective action required by KRS 224.60-137 have been adopted by the cabinet, priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a drinking water supply in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level;

(b) Second, where the release of petroleum poses a direct threat of contamination to a drinking water supply due to the hydrogeologic characteristics of the facility and the surrounding area, the proximity, quality and current or future uses of nearby surface and groundwater, and the potential for migration of the petroleum constituents, and contamination of the drinking water supply is very likely to occur unless corrective action is immediately undertaken;

(c) Third, where the release of petroleum has contaminated off-site property and poses a threat to human health or the environment.

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.

Section 2. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the commission shall consider the following factors:

(a) Whether the facility is owned by a public or private person. Publicly owned facilities shall have the least priority for payment from the petroleum storage tank account;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility.

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 3. Demonstration of Ability to Pay Entry Level. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit to the commission the last five (5) years of income tax returns for the person, partnership or corporation. (2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to an individual, partnership or corporation whose:

(a) Average net income for the five (5) year period is less than $50,000 shall be given first priority;

(b) Average net income for the last five (5) years is less than $100,000 but more than $50,000 shall be given second priority;

(c) Average net income for the last five (5) years is more than $100,000 shall be given third priority.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) The commission may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The commission shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid second;

(3) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(c) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 1(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 1(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of facility that meets the conditions of Section 1(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 1(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) Claims in categories (1) through (7) shall be paid in order of the date of receipt of the claim;

(9)(a) All other claims of private persons for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 3 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than $100,000 is not required to submit income tax returns;

(10) Claims from the Commonwealth of Kentucky, a political subdivision of the state, a commission, or a municipality shall have their claims paid last in order of the date of receipt of the claim.

Section 7. Payment of Certain Classes of Claims. The commission may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

C. GREGORY HIGDON, Chairman
APPROVED BY AGENCY: November 2, 1992
FILED WITH LRC: November 9, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
415 KAR 1:100E

This regulation is being promulgated in response to House Bill 647, 1992 Kentucky Acts Chapter 450, which expands the coverage of the Kentucky Petroleum Storage Tank Environmental Assurance Fund to include owners and operators of petroleum storage tanks who were not previously eligible for participation in the fund. It has been determined that an emergency exists which requires immediate action. Releases into the environment from petroleum storage tanks have occurred and pose a threat to public health, safety, and the environment. Adequate financial resources must be made available to owners and operators to provide a means for investigation and cleanup of this contamination without delay. Providing financial assistance to owners and operators to pay for the costs of corrective action to clean up contamination caused by releases from petroleum storage tanks will encourage cleanup and protect the environment of the Commonwealth of Kentucky. This regulation provides the mechanism for petroleum storage tank owners and operators eligible for participation in the financial responsibility account to receive reimbursement or payment for third party claims. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist the owners and operators of petroleum storage tanks in performing corrective action for several months. This delay poses a threat to the environment of the Commonwealth of Kentucky. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 5, 1992.

BRERETON C. JONES, Governor
C. GREGORY HIGDON, Chairman

(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 16, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

This emergency administrative regulation adds a new section regarding child care recoupment for overpayments of JOBS child care supportive services. This policy is not new but, due to an oversight, was omitted from this regulation when transitional child care (TCC) was placed into a separate regulation. Federal regulations require states to promptly recover overpayments as they relate to child care payments. This policy should have already been incorporated. It is imperative that this information be included in our administrative regulation in order to meet compliance requirements. Failure to include federally mandated policy could place the state in jeopardy of losing federal funds. Expected implementation is anticipated for November 1, 1992. This emergency administrative regulation adds a new section regarding correction of underpayments. This policy is not new but, due to an oversight, was omitted from this administrative regulation. This policy is federally mandated and should have already been incorporated. In order to meet compliance requirements, it is necessary that this information be included in this administrative regulation. Failure to do so could place the state in a position to lose federal funds. Expected implementation is anticipated for November 1, 1992. This emergency administrative regulation adds that the availability to the assistance unit should be determined when considering real and personal property as a resource in AFDC cases. This is a clarification to existing policy. This emergency administrative regulation expands the section regarding income exclusions and disregards to include the income and resources of a spouse of a minor dependent child. This is a clarification to existing policy. This emergency administrative regulation revises policy regarding allowable disregards from earned income in AFDC cases. It alters the wording from "changes" to "increases" as it relates to reports of earnings that impact eligibility and the application of disregards to that income. Expected implementation is anticipated for November 1, 1992. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the October 1992 filing.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

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

904 KAR 2:016E. 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)

EFFECTIVE: October 16, 1992

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 noncompliance 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 16, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

This emergency administrative regulation is necessary for the timely implementation and administration of the Low Income Home Energy Assistance Program in accordance with the federal fiscal year 1993 Low Income Home Energy Assistance Block Grant Application and Plan Narrative. In order to implement the program on November 9, 1992, as specified in the plan narrative, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

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

904 KAR 2:116E. 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.

EFFECTIVE: October 16, 1992

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 16, 1992 at 3 p.m.

REGULATIONS AMENDED BY PROMULGATING BODY AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(As Amended)

45 KAR 1:060. Confidentiality.

RELATES TO: KRS 43.050, 43.070, 43.071
STATUTORY AUTHORITY: KRS 43.075(1)
NECESSITY AND FUNCTION: This regulation provides uniform standards and procedures for maintaining the confidentiality of information obtained by employees of the Office of the Auditor of Public Accounts.

Section 1. Definitions. (1) "Confidential information" means originals, copies, and recordings of all workpapers, documents, notes, and other written or unwritten information related to the official business of the Office of the Auditor of Public Accounts.

(2) "Employee" means:

(a) Current and former employees of the Office of the Auditor of Public Accounts; and

(b) Persons currently and formerly under contract with the Office of the Auditor of Public Accounts.

(3) "Authorized person" means:

(a) In all matters:

1. The Auditor of Public Accounts; and

2. An employee of the Office of the Auditor of Public Accounts; and

(b) With regard to examinations of a local government or state agency, the local government or state agency head and his designee.

Section 2. Confidentiality. (1) An employee of the Office of Auditor of Public Accounts:

(a) Unless specifically authorized in writing by the Auditor of Public Accounts, shall not disclose confidential information to a person who is not an authorized person; and

(b) Unless specifically prohibited in writing by the Auditor of Public Accounts, may disclose confidential information to an authorized person if disclosure is required in the performance of his official duties.

~~[(2)(a) Confidential information obtained by an employee of the Office of the Auditor of Public Accounts in the performance of their official duties shall be preliminary in nature.~~

~~(b) Confidential information that represents final action of the Office of the Auditor of Public Accounts shall be disclosed only through written reports of official findings and recommendations signed by the Auditor of Public Accounts.~~]

(2) [~~(3)~~] An employee shall take action to protect and safeguard confidential information from:

(a) Loss;

(b) Destruction;

(c) Theft; and

(d) Intentional or negligent access, observation, and eavesdropping by anyone who is not an authorized person.

Section 3. Confidentiality Statement. (1) An employee shall sign the "Confidentiality Statement of the Office of the Auditor of Public Accounts".

(2) "Confidentiality Statement of the Office of the Auditor of Public Accounts (1992)" is incorporated by reference. It may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 4. Disciplinary Action. An employee who violates the provisions of this administrative regulation shall be subject to disciplinary action.

A. B. CHANDLER, III, Auditor
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation sets out the procedures for issuance of benefits where death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Certification of Beneficiary, Form 7, dated July 1991, from the beneficiary named by the member.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member.

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.

(3) If a beneficiary is a minor child, a copy of the child's birth certificate.

(4) If a beneficiary is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee.

(5) If a beneficiary is divorced from the member, a copy of the divorce decree.

(6) If monthly benefits are available to the beneficiary, copies of the birth certificates of the member and the beneficiary.

(7) If an estate is beneficiary, verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. Upon receipt of the death certificate, the retirement office shall provide to the beneficiary the monthly payment options available on the form Estimated Retirement Allowance, Form 6A, dated July 1991. If the member died in the same month as his effective retirement but prior to the drawing of the first check, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected. If a refund of the account is to be made, the beneficiary shall complete a Form 8, **"Refund of Deceased Member's Account",** dated July 1992 [~~1991~~].

Section 5. No payment shall be made until all information,

documents and forms required by the retirement system are received.

Section 6. The forms required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

JOHN D. ROBEY, Board of Trustees
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.

(2) For members in nonhazardous positions, the application shall be received in the retirement office within [~~twelve (12) months of the employee's last day of paid employment, which shall consist of~~] 365 calendar days of the employee's last day of paid employment in a regular full-time position. The period [~~year~~] shall begin on the day after the last day of paid employment and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.

(3) For members in hazardous positions, application shall be received prior to the member's date of termination of employment.

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. If the member is not in a hazardous position, a Job Description, dated August 1992 [~~1988~~], shall be completed by the member and by his employer and submitted to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. The member or his physicians may submit a current listing of the member's prescription medications. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated or examined the member have been received, the information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the **medical evidence** [~~medical~~] **[~~records~~]** contained in the member's retirement file. The medical examiner may contact the member or the member's physicians to request additional **medical evidence** [~~medical~~] **[~~information~~]**.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period ends [~~elapses~~]. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g). When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal [~~appeals~~] hearing in writing. If the member is unable to attend or desires to reschedule a formal [~~appeals~~] hearing, the member shall send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any [~~preexisting illnesses or~~] vocational factors.

Section 11. The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file.

Section 12. All parties shall have fourteen (14) calendar [~~seven (7) working~~] days to submit written exceptions to the hearing officer's findings and conclusions to the retirement office, beginning on the day following receipt of the hearing officer's recommended order.

Section 13. (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.

(4) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit in determining the total

retroactive payment owed to the member.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Board of Trustees
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.

FINANCE AND ADMINISTRATION CABINET
KENTUCKY RETIREMENT SYSTEMS
(As Amended)

105 KAR 1:250. Participation of county attorney employees.

RELATES TO: KRS 78.5302
STATUTORY AUTHORITY: KRS 61.645
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from the county attorney's delinquent tax fees, federal or state grant funds received for collection of child support or any other source of funds outside the control of the fiscal court.

Section 1. For each employee paid in whole or in part from delinquent tax fees, federal or state grant funds received for collection of child support or other funds outside the control of the fiscal court, the county attorney shall complete and submit a Form 110, Retirement System Membership Determination, **dated August 1992**, to the retirement office. The county attorney shall submit the form on or before the date the first contributions are reported on each employee.

Section 2. The county attorney shall determine the system in which each employee shall participate based on the following:

(1) For an employee currently participating in the County Employees Retirement System or Kentucky Employees Retirement System, the county attorney shall continue to make the required contributions for the supplementary wages to the system in which the employee is participating.

(2) For employees not currently participating in a retirement system, the employee shall participate in the Kentucky Employees Retirement System if a majority of the employee's time is spent in performing prosecutorial duties. If a majority of the employee's time is spent preforming civil legal representation of the fiscal court and other county officials, the employee shall participate in the County Employees Retirement System.

(3) For those employees whose time is spent performing duties related to child support collection cases, whether criminal or civil, the employee shall participate in the retirement system which the county attorney has selected for child support enforcement employees consistent with the funding and operational methods of the county attorney's office.

(4) For purposes of this section, prosecutorial duties shall include duties and functions related to the prosecution of criminal cases in the district or circuit courts of the Commonwealth. Civil legal representation shall include duties and functions related to the representation of the fiscal court, its officers or employees or other elected county officers in any civil or administrative proceeding in state or federal courts and administrative agencies.

Section 3. Once the county attorney has determined the system in which an employee shall participate, the employee shall participate in the designated system as long as he remains an employee of the county attorney regardless of any change in the employee's duties or responsibilities.

Section 4. The form**[s]** required by this administrative regulation **is** **[~~are~~]** incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, 40601, **8 a.m. to 4:30 p.m.,** Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.

FINANCE AND ADMINISTRATION CABINET
KENTUCKY RETIREMENT SYSTEMS
(As Amended)

105 KAR 1:260. Purchase of Out-of-state service credit.

RELATES TO: KRS 61.552
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute provides for the purchase of out-of-state service credit for members of the Kentucky Retirement Systems. This administrative regulation sets out the requirements and forms for obtaining credit for this service.

Section 1. Each employee wishing to purchase service credit for out-of-state public service under KRS **61.552(17) and (18)** **[~~61.555(17) to (18)~~]** shall request a copy of Form 41, Certification of Out-of -state Service, **dated** **[~~effective~~]** August 1992.

Section 2. The employee shall mail the form to his former employer and retirement plan for completion. If the employee wishes to purchase hazardous service in CERS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer. The employee shall be responsible for obtaining the information requested on the form regarding the period of out-of-state service.

Section 3. The completed form and job description shall be submitted to the retirement office. The retirement system shall determine how much service is eligible for purchase under the statute **[~~based on the information submitted~~]**.

Section 4. Service credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592.

Section 5. The retirement system shall notify the employee of the cost of the service which qualifies for purchase. The cost shall be determined as a delayed contribution payment except that the employee shall pay 100 percent of the total. The cost shall be based on the employee's age rounded to the nearest year and the employee's estimated current rate of pay, final rate of pay or final compensation, whichever is higher. Payment by the employee shall be due on the date shown on the notification **unless the employee participates in an installment purchase plan as provided under KRS 61.552(16) and 105 KAR 1:150**.

Section 6. If the employee's actual rate of pay or final compensation is higher than estimated and results in a difference of $100 or more in the cost of the service, the employee shall be notified and shall pay the additional cost for the service within thirty (30) days of the date on the notification.

Section 7. If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons. If additional information is needed to make the determination, the employee shall be responsible for obtaining the additional information.

Section 8. The form required by the administrative regulation is incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.020(1), 315.0351(7), 315.191(1)
NECESSITY AND FUNCTION: **KRS 315.020(1) and 315.0351(7)** [~~Kentucky Revised Statutes~~] require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy.

Section 1. Definitions. [~~The term~~] "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit, who accepts responsibility for the operation of a pharmacy in conformance with all laws and regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of **the** [~~such~~] pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the application for a permit to operate a pharmacy and in each application for renewal of that permit thereafter.

(2) A pharmacist may not serve as pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he is physically present in that pharmacy for a minimum of ten (10) hours per week or **the** [~~such~~] amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Notifying the Board of Pharmacy within five (5) working days of any change in the:

1. Employment of the pharmacist-in-charge;
2. Employment of staff pharmacists; and
3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations; and

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies.

Section 3. (1) The "Application for Permit to Operate a Pharmacy in Kentucky (11/92)" and the "Application for Permit to Operate an Out-of-state Pharmacy (11/92)" are incorporated by reference.

(2) These forms may be obtained, inspected, or copied at the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

TOM HOUCHENS, President
APPROVED BY AGENCY: September 9, 1992
FILED WITH LRC: September 9, 1992 at 1 p.m.

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

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This **administrative** 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 **administrative** regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this **administrative** 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. **The following zone requirements shall apply to all migratory birds listed in this section.** [~~(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 **shall be met as established in subparagraphs 1 through 4 of this paragraph** [~~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.

a. If the department determines [~~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.

b. 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.

a. If the department determines [~~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.

b. 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. **The following bag and possession limits shall apply to all migratory birds listed in this section.**

(1) Gun and archery.

(a) Ducks. The daily bag limit **shall be** [~~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 **not** be taken. The possession limit **shall be** [~~is~~] double the daily bag.

(b) Coots. The daily bag limit **shall be** [~~is~~] fifteen (15) and the possession limit **shall be** [~~is~~] thirty (30).

(c) Mergansers. The daily bag limit **shall be** [~~is~~] five (5) of which no more than one (1) shall be a hooded merganser. Possession limit **shall be** [~~is~~] double the daily bag limit.

(d) Geese: [~~:~~

~~1.~~] The bag limit **shall be** [~~is~~] seven (7) with no more than two (2) [~~three (3)~~] Canada geese and two (2) white-fronted geese. The possession limit **shall be** [~~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 **administrative** regulation, singly or in aggregate.

Section 4. **Except as provided in Section 7 of this administrative regulation, shooting hours for migratory species shall be permitted one-half (1/2) hour before sunrise to sunset.** [~~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. **(1) Pursuant to 301 KAR 2:044, Section 7(2)(a), the possession and use of lead shot shall be prohibited for the taking of ducks, geese, coots and mergansers.**

(2) Steel shot larger than F shall not be in a hunter's possession while hunting. [~~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 **administrative** regulation.

(1) Permanent blinds **shall not be** [~~are not~~] permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) [~~No~~] Blinds shall **not** 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 **administrative** 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 **administrative** 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 **for migratory species listed in this administrative regulation shall be permitted** [:] 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 **administrative** 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 **administrative** 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 **administrative** regulation.

(b) LBL permit. An annual LBL hunting permit **shall be** [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 **administrative** regulation **shall not be** [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 **administrative** 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 **shall be** [is] allowed but hunting **shall be** [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 **shall be** [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 **for migratory species listed in this administrative regulation shall be permitted from** [:] 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 **shall be** [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, **shall be** [are] closed from October 15, through March 15.

(b) Westvaco permit. An annual Westvaco Hunting Permit **shall be** [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 **administrative** 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, **shall be** [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 **shall be** [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 **shall be** [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 **shall be** [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 **shall be** [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 **shall be** [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 **by the department**. Permittees who fail to remove their blind within thirty (30) days after the close of the waterfowl season **shall** 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:

1. Five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present).

2. [and] Any forfeited blinds shall be assigned to those people in the order they were drawn.

(15) Waterfowl shooting hours **shall be** [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 **shall be** [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 [~~geese~~] hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory waterfowl [~~geese~~] 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 **daily** waterfowl harvest register form **(G-32)** 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 **daily waterfowl harvest register** forms **(G-32)** 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 **these** [~~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 11, 1992 at 2 p.m.

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

301 KAR 4:020. Ballard Wildlife Management Area [~~Refuge~~] restrictions.

RELATES TO: KRS 150.010, 150.025, 150.300, 150.600
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This **administrative** regulation pertains to entering upon the premises and disturbing or poaching waterfowl and other wildlife on Ballard Wildlife Management Area [~~and Refuge~~], located in Ballard County. This **administrative** regulation is necessary to prevent disturbance of migratory waterfowl. The function of this **administrative** regulation is to insure that migratory waterfowl and other wildlife are not disturbed or molested during specified periods or in places that are closed. The purpose of this amendment is to update terminology and clarify the **administrative** regulation. [~~by hunters and other persons.~~]

Section 1. **Trespass by Unauthorized Persons. A person shall not enter upon the premises of the Ballard Wildlife Management Area for any reason during the period October 15 through March**

15, except the following authorized personnel:

(1) Department employees acting under the direction of the commissioner of the department;

(2) The director of the Wildlife Division;

(3) The wildlife management area manager;

(4) U.S. Fish and Wildlife Service special agents; and

(5) Persons participating in department managed activities.

~~[Trespass by Unauthorized Persons. No person, except bona fide department employees acting under the direction of the commissioner of the department, director of Wildlife Division, [game management or] wildlife management area manager, [and] U.S. Fish and Wildlife Service special agents and other authorized persons, shall enter upon the premises of the Ballard [Refuge and] Wildlife Management Area for any reason [other than assigned duties by the above mentioned supervisors] during the period October 15 through March 15.]~~

Section 2. **Carrying of Firearms or Accompanied by a Dog. Only authorized personnel or U.S. Fish and Wildlife Service special agents engaged in assigned duties, shall enter upon the premises of the Ballard Wildlife Management Area during the period October 15 through March 15, shall be permitted to be accompanied by a dog and possess firearms necessary to conduct permitted activities.** ~~[Carrying of Firearms [Weapons] or Accompanied by a Dog. No person, except bona fide employees and U.S. Fish and Wildlife Service special agents engaged in assigned duties, shall enter upon the premises of the Ballard [Refuge and] Wildlife Management Area while accompanied by a dog, or carrying any type of firearms, bow and arrows or crossbow upon or about his person or in a vehicle, except when permitted during any regular hunting season as authorized by regulation.]~~

Section 3. Trespass by Boat. During periods of high water or flood, **[**~~no~~**]** unauthorized person[~~(s)~~] **shall not [**~~may~~**]** enter upon the premises of the Ballard [~~Refuge and~~] Wildlife Management Area by boat for any purpose. High water or flood conditions do not affect or change the [~~refuge or~~] management area boundary which is marked by yellow signs.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: August 18, 1992
FILED WITH LRC: September 11, 1992 at 2 p.m.

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

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted pursuant to 405 KAR 7:091 and 405 KAR 7:092 before the cabinet.

(3) [~~(2)~~] "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(4) [~~(3)~~] "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) [~~(4)~~] "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(6) [~~(5)~~] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) [~~(6)~~] "Approximate original contour" is defined in KRS 350.010.

(8) [~~(7)~~] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) [~~(8)~~] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) [~~(9)~~] "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(11) [~~(10)~~] "Cabinet" is defined in KRS 350.010.

(12) [~~(11)~~] "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under

SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(13) [~~(12)~~] "CFR" means Code of Federal Regulations.

(14) [~~(13)~~] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) [~~(14)~~] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) [~~(15)~~] "Coal mine waste" means coal processing waste and underground development waste.

(17) [~~(16)~~] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(18) [~~(17)~~] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(19) [~~(18)~~] "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(20) [~~(19)~~] "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of 405 KAR 7:035.

(21) [~~(20)~~] "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(22) [~~(21)~~] "Day" means calendar day unless otherwise specified to be a working day.

(23) [~~(22)~~] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(24) [~~(23)~~] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) [~~(24)~~] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(26) [~~(25)~~] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(27) [~~(26)~~] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(28) "Final order" means final order of the secretary, which may include[s] findings of fact, conclusions of law, and an order.

(29) [~~(27)~~] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(30) [~~(28)~~] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit which, directly or through another unit of government, finances construction.

(31) [~~(29)~~] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(32) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; the term includes the chief hearing officer.

(33) [~~(30)~~] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(34) [~~(31)~~] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(35) [~~(32)~~] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(36) [~~(33)~~] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(37) [~~(34)~~] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(38) [~~(35)~~] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(39) "Individual", as used in 405 KAR 7:091 and 7:092, means a natural person.

(40) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(41) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order, or any other document which commences an administrative proceeding.

(42) [~~(36)~~] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(43) "Interim report" means statements made by a hearing officer in written form which are not intended to be considered by the secretary and which are not subject to judicial review.

(44) [~~(37)~~] "KAR" means Kentucky administrative regulations.

(45) [~~(38)~~] "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(46) [~~(39)~~] "KRS" means Kentucky Revised Statutes.

(47) [~~(40)~~] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(48) [~~(41)~~] "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(49) [~~(42)~~] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(50) [~~(43)~~] "MSHA" means Mine Safety and Health Administration.

(51) [~~(44)~~] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(52) "Office", as used in 405 KAR 7:091 and 7:092, means the office of administrative hearings.

(53) [~~(45)~~] "Operations" is defined in KRS 350.010.

(54) [~~(46)~~] "Operator" is defined in KRS 350.010.

(55) [~~(47)~~] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(56) [~~(48)~~] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(57) [~~(49)~~] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(58) [~~(50)~~] "Overburden" is defined in KRS 350.010.

(59) [~~(51)~~] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(60) [~~(52)~~] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(61) [~~(53)~~] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(62) [~~(54)~~] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(63) [~~(55)~~] "Person" is defined in KRS 350.010 [~~and KRS 446.010(26)~~].

(64) [~~(56)~~] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(65) [~~(57)~~] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(66) [~~(58)~~] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(67) [~~(59)~~] "Reclamation" is defined in KRS 350.010.

(68) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon, proposed findings and recommended orders; and legal briefs and orders.

(69) [~~(60)~~] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(70) [~~(61)~~] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR

Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(71) [~~(62)~~] "SCS" means Soil Conservation Service.

(72) [~~(63)~~] "Secretary" is defined in KRS 350.010.

(73) [~~(64)~~] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(74) [~~(65)~~] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(75) [~~(66)~~] "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(76) [~~(67)~~] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(77) [~~(68)~~] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(78) [~~(69)~~] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(79) [~~(70)~~] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(80) [~~(71)~~] "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(81) [~~(72)~~] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(82) [~~(73)~~] "Surface coal mining operations" is defined in KRS 350.010.

(83) [~~(74)~~] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(84) [~~(75)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(85) [~~(76)~~] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(86) [~~(77)~~] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(87) [~~(78)~~] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(88) [~~(79)~~] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(89) [~~(80)~~] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

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

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

405 KAR 7:091. General practice provisions.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts

730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:092 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations on performance bond amount, duration, release, and forfeiture; administrative hearings on orders to abate or alleviate issued pursuant to KRS 224.10-410 to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet or arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against any party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 400 KAR 1:040 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and 405 KAR Chapters 7 through 24. The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b) Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except where designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in his discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by administrative regulation, KRS Chapter 350 and 405 KAR Chapters 7-24; and

(i) Make or recommend decisions or reports in accordance with KRS Chapter 350 and the administrative regulations.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary, except that the administrative hearing officer shall, within twenty (20) days of the close of the hearing record, make a report and recommended order in administrative hearings on permit

determinations under 405 KAR 7:092, Section 8. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under 1992 Acts c. 304. There shall be no other or further submissions.

(b) The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in his report.

(6) Secretary's order.

(a) The secretary shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and office personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing or conference, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing or conference. Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(b) Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why his claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) A proposed penalty assessment, notice of assessment conference, notice of administrative hearing, or other documents required to be served, including administrative summonses, shall be served either under 400 KAR 1:030 or by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by **subsection (2) of this section** [~~paragraph (c) of this subsection~~]. The return receipt shall be proof of the time, place and manner of service. To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit by the cabinet, upon a person specified as an operator in the permit application, or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit application (at the address specified on the face of the permit, at the permanent address for the permittee or operator specified in the permit application, or at any new address that has been specified in writing by the permittee or operator), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the office must be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of any document relating to the proceeding shall be made upon the attorney in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the commissioner of the Department of Law and shall be effective upon receipt by the Department of Law.

Section 6. Administrative Summons and Public Notice of Hearing. (1) Upon receipt of an initiating document, the office shall promptly serve in accordance with Section 5 of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and regulations involved.

(2) For all administrative hearings initiated pursuant to 405 KAR 7:092, Section 5, notice of the scheduled hearing shall also be mailed to any intervenors, shall be posted at the department's appropriate regional office and, if practicable, shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the office when the document is received and stamped by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the office shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly inform the office of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, he will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by office employees will be at rates which cover the cost of manpower, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030, Section 4.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under 405 KAR 7:092 or if an extension is contrary to law or regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The office shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is [~~not a party and is~~] not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the office or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings and Penalty Assessment Conferences. (1) A penalty assessment conference shall be held in the department's regional office for the mine site, unless a closer location is approved by the conference officer.

(2) Administrative hearings shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the petition or other initiating document or answer at the time the petition or other initiating document or answer is filed with the office. The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding under 405 KAR 7:092. A petitioner shall set forth a statement setting forth the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 1992 Acts c. 304 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report

recommending procedures to be followed in order to comply with the court's order. The hearing officer will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

Section 13. 405 KAR 7:090, Hearings, is hereby repealed.

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

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

405 KAR 7:092. Administrative hearings and assessment conferences.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:091 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations of performance bond amount, duration, release, and forfeiture; administrative hearings arising under KRS 224.10-410 on orders to abate or alleviate issued to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24, except that the provisions pertaining to the payment of proposed assessments into an escrow account as set forth in Sections 3 and 6 of this administrative regulation and the waiver of payments as provided in Section 15 of this administrative regulation shall only be applicable to those notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance issued on or subsequent to the effective date of this administrative regulation. If requests for formal hearings have been timely filed at the time this administrative regulation takes effect, cases shall not be dismissed for the reason that they do not conform to the new procedural requirements of this administrative regulation for filing administrative complaints and answers.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance in writing of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel of the department.

(2) Criteria. In determining the amount of the penalty, consideration shall be given to the permittee's or operator's history of previous violations at the particular surface coal mining and reclamation operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee, operator, or person was negligent; and the demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable. If a violation has been cited against a person conducting coal exploration operations consideration shall be given to the above factors as applicable in determining the amount of the penalty.

(3) Service.

(a) Method; time. The notice of proposed penalty assessment shall be served under 405 KAR 7:091, Section 5, together with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) Failure to timely serve; substantial prejudice. Failure to serve the proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless the person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay and makes a timely written objection to the delay. An objection shall be timely only if made on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed assessment.

(a) Waiver; final order to enter. The person issued the notice of proposed penalty assessment may choose not to contest the assessment and a final order of the secretary shall be entered finding that:

1. The person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding in subparagraph 2 of this paragraph shall be omitted and the proposed penalty assessment shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(b) Assessment conference. Within thirty (30) days of service of the notice of proposed assessment or if the document is returned undeliverable, unclaimed or refused, thirty (30) days from the date of the return, the person to whom the notice of proposed penalty

assessment was sent may request review of the penalty assessment by requesting in writing an assessment conference pursuant to Section 4 of this administrative regulation in which case payment of the proposed assessment into the cabinet's escrow account shall not be required; or

(c) Petition for administrative hearing. The person to whom a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance was issued may contest the proposed penalty assessment or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation. If an assessment conference has been held pursuant to Section 4 of this administrative regulation, the person may contest the amount assessed in the conference officer's report or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation. The fact of the violation may not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation. Nothing in this paragraph shall be construed as infringing upon any person's right to contest the fact of the violation without having to pay the proposed assessment into the cabinet's escrow account if such petition was timely filed in accordance with Section 7 of this administrative regulation.

Section 4. Procedures for Assessment Conference. (1) In general.

(a) Time for filing. Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request an assessment conference on the proposed penalty assessment. The request for an assessment conference shall be filed with the office within thirty (30) days of the date of receipt of the proposed penalty assessment or, if the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return.

(b) Waiver; final order to enter. Failure to timely request an assessment conference shall constitute a waiver of the right to a conference. If a petition for review of the proposed penalty assessment has not been timely filed under Section 6 of this administrative regulation a final order shall be entered in conformity with Section 6(1)(c) of this administrative regulation.

(c) Date of conference; failure to timely schedule; substantial prejudice. If an assessment conference is requested, it shall be scheduled for a date no later than sixty (60) days after the cabinet's receipt of the request. Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay. The scheduling of the assessment conference shall not operate as a stay of any notice or order.

(2) Service; public participation. Notice of the assessment conference shall be served under 405 KAR 7:091, Section 5 and a copy of the notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the assessment conference at the department's appropriate regional office at least five (5) days before the conference. Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings or by the provisions of 400 KAR 1:040. (4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed assessment. Within thirty (30) days after the conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be promptly served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Agreed order.

(a) Waiver of further review. If an agreed order is entered into, the person assessed shall be deemed to have waived all rights to further review of the fact of the violation and penalty in question. The agreed order shall contain a clause that any petition for review of the fact of the violation filed in accordance with Section 7 of this administrative regulation shall be deemed withdrawn.

(b) Enforcement of agreed order. If full payment of the amount specified in the agreed order is not received by the cabinet within thirty (30) days after the date of the secretary's signature, the cabinet may take necessary steps to enforce the agreed order.

(7) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled conference, the assessment officer shall within thirty (30) days of the date of the scheduled conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(8) Statements not to be introduced at administrative hearings. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation no evidence as to statements made by one (1) party at a conference shall be introduced by another party as evidence or to impeach a witness.

(9) Administrative hearing; who may request. Any person issued a proposed penalty assessment may request under Section 6 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty. The cabinet may request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(10) Failure to timely request; order to enter. If a request for an administrative hearing is not filed with the office within thirty (30) days of mailing of the conference officer's report, an order of the secretary shall be entered and mailed containing the following:

(a) That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

(b) That the fact of the violation is deemed admitted; and

(c) That the penalty assessment contained in the conference officer's report is deemed accepted and is due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding set forth in paragraph (b) of this subsection shall be omitted and the penalty assessment contained in the conference officer's report shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation.

Section 5. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. It has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition has occurred or is occurring; or

2. A permittee, operator, or person has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by an order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The provisions of KRS 350.990(9) apply; or

4. The cabinet has reason to believe additional remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public; or

5. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section, in which case prepayment of the proposed penalty assessment is not required.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. The permittee, operator, or person has willfully failed to comply with an order for cessation and immediate compliance; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

(f) Any other relief to which it may be entitled by KRS Chapter 350.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Filing petition; waiver. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(a) A petition for review of a proposed penalty assessment shall be filed in the office within thirty (30) days of service of the proposed assessment, or if the notice of proposed penalty assessment is returned undeliverable, unclaimed or refused, within thirty (30) days of the date of return; or

(b) If a timely request for an assessment conference has been made pursuant to Section 4 of this administrative regulation, a petition for review must be filed in the office within thirty (30) days from mailing of the conference officer's report.

(c) An extension of time shall not be granted for filing a petition for review of a proposed penalty assessment as required by this section. If a petition for review is not timely filed, the petition, if any, shall be dismissed and a final order shall be entered which contains the following:

1. That the person to whom the notice or [~~of~~] order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment or the assessment as amended by the conference officer;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty assessment, or the assessment as amended by the conference officer is deemed admitted and shall be due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing on the fact of the violation has been timely filed under Section 7 of this administrative regulation, the finding set forth in subparagraph 2 of this paragraph shall be omitted and the penalty assessment shall be due and payable within thirty (30) days after the entry of a final order affirming the fact of the violation.

(2) Contents of petition; payment required.

(a) The petition shall include:

1. A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation or both is being contested;

2. If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula;

3. Identification by reference to the noncompliance or cessation order number of all violations being contested; and

4. The identifying number of the cashier's check, certified check, bank draft, or bank money order accompanying the petition.

(b) The petition shall be accompanied by full payment of the proposed penalty assessment, or the assessment as amended by the conference officer, in the form of a cashier's check, certified check, bank draft, or bank money order made payable to the Kentucky State Treasurer to be placed in an escrow account pending final determination of the assessment; and, on the face of the payment an identification, by reference to the noncompliance or cessation order identification number, of the violations for which payment is being tendered.

(c) An extension of time shall not be granted for full payment of the proposed assessment. If payment is not timely made, the petition shall be dismissed, and a final order shall be entered in conformity with subsection (1)(c) of this section.

(3) Answer or responsive pleading. The cabinet shall have thirty (30) days from service of a copy of the petition to file an answer or responsive pleading with the office. An answer shall contain a

statement specifically admitting or denying the alleged errors stated in the petition and setting forth other matters to be considered on review.

(4) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(5) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(6) Burden of proof. In administrative hearings under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the assessment and the ultimate burden of persuasion as to the amount of the assessment. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(7) Default.

(a) In a proposed penalty assessment proceeding if the person against whom the proposed penalty is assessed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(c) If the person against whom the proposed penalty is assessed fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(8) Hearing officer's report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty, findings of fact on each of the four (4), criteria set forth in 405 KAR 7:095, Section 3, and conclusions of law.

Section 7. Administrative Review of Notices of Noncompliance and Orders for Remedial Measures and Orders for Cessation and Immediate Compliance. (1) Who may file. A person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations or a person having an interest which is or may be adversely affected by such a notice or order may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days of the receipt of a notice or order or within thirty (30) days of receipt of notice of modification, vacation, or termination of the notice or order or if any of the foregoing documents is returned as undeliverable, unclaimed or refused within thirty (30) days of the date of the return.

(b) An extension of time shall not be granted for filing a petition for review. If a petition for review is not timely filed, the petition shall be dismissed.

(c) Failure to file a petition for review of a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance under this section shall not preclude challenging the fact of violation at an administrative hearing requested under Section 6 of this administrative regulation.

(3) Contents of petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief the following:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of the notice or order sought to be reviewed;

(d) A statement as to whether the person waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall have thirty (30) days from service of a copy of the petition within which to file an answer or other responsive pleading. The answer shall contain a statement specifically admitting or denying the alleged facts stated by the petitioner and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and other interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) A petitioner shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed and shall file a copy of any subsequent order for cessation and immediate compliance for failure to timely abate the violation which is the subject to the notice sought to be reviewed within ten (10) days of receipt of the notice or order. If a petitioner desires to challenge a subsequent notice or order, the petitioner must file a separate petition for review. Petitions for review of related notices or orders are subject to consolidation.

(7) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing, unless the twenty-one (21) day period is waived in writing.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(9) Burden of proof. In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Applications for new permits;

(b) Applications for permit revisions and amendments, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions and amendments ordered by the cabinet, except challenges of permit revisions ordered as a remedial measure

in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 6 or 7 of this administrative regulation; and

(d) Applications for coal exploration permits.

(2) Time to file; waiver. A petition for review shall be filed with the office within thirty (30) days from the date the person has actual notice of the determination or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet 's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief;

(d) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or responsive pleading within thirty (30) days of service of the petition. An answer shall contain a statement specifically admitting or denying facts or alleged errors stated in the petition and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. An interested party shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof.

(a) In a proceeding to review a decision on an application for a new permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations or that the permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations, or that the cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) In a proceeding to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations; and

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) In a proceeding to review a permit revision or amendment ordered by the cabinet, the cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended and the permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) In a proceeding to review a decision on an application for a coal exploration permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of Cabinet Determinations. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) The petition for review shall be filed with the office within thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:

(a) A statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief; and

(d) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or other responsive pleading within thirty (30) days of service [~~receipt~~] of the petition specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the

original petition, whichever is longer, to file an answer. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceedings for Suspension or Revocation of Permits Because of Pattern of Violations. (1) Initiation of proceedings.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f) and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations which contribute to a pattern of violations;

2. A copy of each order or notice which contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office which shall state:

(a) The reasons in detail why a pattern of violations, as described in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer .

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee directed to complete necessary remedial measures and reclamation operations. In making such a recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists;

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate to a surface coal mining and reclamation operation, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the office a copy of the order.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to 405 KAR 7:091, Section 6, and shall set the time and place for an administrative hearing to be held not **more** **[~~less~~]** than ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(3) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with 405 KAR 7:091, Section 3. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety [~~validity~~] of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order to

abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.

Section 12. Temporary Relief. (1)(a) Pending the completion of the investigation and hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or administrative regulations, or a permit or bond release decision of the cabinet.

(b) A petition for relief shall be in writing, and filed with the office. The petition shall contain:

1. A detailed statement setting forth [~~giving~~] reasons why such relief should be granted;

2. A showing that there is a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

4. If the petition relates to an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested. [~~and shall be filed with the office.~~]

(c) A hearing officer may grant temporary relief after making a written finding that relief is warranted, and shall state the reasons for the finding. A hearing officer shall grant or deny relief expeditiously; except if the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, a hearing officer shall grant or deny temporary relief within five (5) working days of receipt by the office of a request.

(2) A hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, Sections 2 and 3 under conditions as is deemed appropriate, if:

(a) An administrative hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) If a person requests temporary relief from a permit or coal exploration determination, the hearing officer under conditions as may be prescribed pending final determination of the proceeding may grant temporary relief if:

(a) The parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

(4) Determinations on petitions concerning orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or bond release decisions shall be handled as follows:

(a) If the five (5) day requirement set forth in subsection (1) of this section is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the petition.

(b) If a waiver of the five (5) day requirement set forth in subsection (1) is not made, the following shall apply:

1. The five (5) day time for decision shall not begin to run until the petition for temporary relief is filed with the office;

2. The petition shall identify the permit number, permittee, the date and number of the noncompliance or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

3. In addition to the service requirements of 405 KAR 7:091, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition;

4. The representative of the Department of Law and other parties may indicate their objection to the application by communicating the objection to the hearing officer and the applicant by telephone. However, ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of Department of Law and other parties may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the hearing officer and immediately served upon the petitioner;

5. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time and date for the administrative hearing by communicating the information to the Department of Law, other parties, and the petitioner by telephone. The hearing officer shall reduce the communications to writing in the form of a memorandum to the file;

6. If an evidentiary hearing is held:

a. The hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing;

b. The hearing officer shall either rule from the bench on the petition, orally stating the reasons for his decision or shall within twenty-four (24) hours of completion of the hearing issue a written decision. If the hearing officer makes an oral ruling, he shall issue a written decision within three (3) working days; and

7. If at any time after the initiation of the expedited procedure, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement.

Section 13. Penalties. (1) Any person who violates any of the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to those provisions, may be assessed a civil penalty of not more than $5,000 for each day during which the violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against a person issued an order pursuant to KRS 350.130(4).

(2) If violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a

civil penalty of not less than $750 shall be assessed for each day during which the failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) A penalty for failure to abate the violation shall not be assessed for more than thirty (30) days for each violation. If the person has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 12 of this administrative regulation, then the abatement period shall be extended until the date a final order concerning the violation in question is issued.

(3) A person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and 405 KAR Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or the administrative regulations or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Natural Resources and Environmental Protection Cabinet by the cabinet's Department of Law, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If judicial review is not sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the secretary or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the secretary or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 14. Costs and Expenses. (1) Who may file. A person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of the person's participation in a proceeding held pursuant to this administrative regulation which results in an order of the secretary. The petition for an award of costs and expenses, including attorneys' fees, shall be filed with the cabinet within forty-five (45) days of mailing of the final order. Failure to timely file the petition shall constitute a waiver of the right to an award.

(2) Contents of petition. A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for the services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(3) Answer. A person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer or other responsive pleading specifically admitting or denying the allegations stated in the petition and setting forth other matters to be considered.

(4) Criteria for awarding of costs. Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To a person from the permittee, if the person initiates an administrative proceeding reviewing an enforcement action, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, 405 KAR or permit conditions or that an imminent hazard existed, or to a person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To a person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated an administrative hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from a person where the permittee demonstrates that the person initiated an administrative hearing or conference under this administrative regulation or participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that a person applied for review pursuant to this administrative regulation or that a party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation or participation or both in an administrative hearing or conference under this administrative regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 15. Determinations as to Inability to Prepay. (1) Inability to pay. Notwithstanding the provisions of Section 6(2) of this administrative regulation, an individual, upon filing a petition for review pursuant to Section 6 of this administrative regulation, may, in lieu of paying into the cabinet's escrow account the amount of the proposed assessment, simultaneously submit a petition and affidavit requesting the office to accord the individual a waiver of the requirement to prepay.

(2) Contents of petition. The petition for waiver of prepayment requirements shall set forth:

(a) A statement of facts underlying the request for a determination that the individual is unable to comply with Section 6(2) of this administrative regulation; and

(b) An affidavit, subject to penalties for perjury, setting forth the applicant's income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

(3) Response. Within fifteen (15) days of service of the petition, the cabinet may file an answer or responsive pleading admitting or denying the contents of the petition for waiver. Failure by the cabinet

to submit an answer or responsive pleading shall not relieve the office from making an independent determination as to the validity of the contents of the petition for waiver, and whether the waiver should be given.

(4) Interim report. Within thirty (30) days of filing of the petition, the hearing officer [office] shall issue an interim report accepting or denying the petition for waiver. If the waiver is accepted, it shall be so noted in the record and shall remain in effect, subject to review upon proper motion. If the waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the interim report to pay into the cabinet's escrow account the amount of the assessment as set forth in the notice of proposed assessment or as set forth by the conference officer under the provisions of Section 4 of this administrative regulation.

(5) Presumptions.

(a) It shall be prima facie evidence that the individual is unable to comply with Section 6(2) of this administrative regulation if the petition is accompanied by a certified copy of a petition for bankruptcy or the individual is receiving or is eligible to receive public assistance payments at the time a petition for waiver is filed.

(b) It shall be prima facie evidence a person is not eligible for a waiver if he owns real property; is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle.

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

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

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS 146.410, Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Cabinet" is defined in KRS 350.010.

(13) "Cemetery" means any area where human bodies are interred.

(14) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(15) "CFR" means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(24) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(25) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(26) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(27) "Day" means calendar day unless otherwise specified to be a working day.

(28) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(29) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(30) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(31) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(32) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(35) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(36) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(37) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(40) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(41) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(42) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky,
this period normally extends from mid-April to mid-October.

(43) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(44) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(45) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(46) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(47) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(48) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(49) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area.

(50) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(51) [~~(50)~~] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(52) [~~(51)~~] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(53) [~~(52)~~] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(54) [~~(53)~~] "KAR" means Kentucky administrative regulations.

(55) [~~(54)~~] "KRS" means Kentucky Revised Statutes.

(56) [~~(55)~~] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(57) [~~(56)~~] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(58) [~~(57)~~] "MRP" means mining and reclamation plan.

(59) [~~(58)~~] "MSHA" means Mine Safety and Health Administration.

(60) [~~(59)~~] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(61) [~~(60)~~] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(62) [~~(61)~~] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(63) [~~(62)~~] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(64) [~~(63)~~] "Operations" is defined in KRS 350.010.

(65) [~~(64)~~] "Operator" is defined in KRS 350.010.

(66) [~~(65)~~] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(67) [~~(66)~~] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(68) [~~(67)~~] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(69) [~~(68)~~] "Overburden" is defined in KRS 350.010.

(70) [~~(69)~~] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(71) [~~(70)~~] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(72) [~~(71)~~] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(73) [~~(72)~~] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(74) [~~(73)~~] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(75) [~~(74)~~] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(76) [~~(75)~~] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(77) [~~(76)~~] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(78) [~~(77)~~] "Person" is defined in KRS 350.010 [~~and 446.010(26)~~].

(79) [~~(78)~~] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(80) [~~(79)~~] "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(81) [~~(80)~~] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(82) [~~(81)~~] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(83) [~~(82)~~] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(84) [~~(83)~~] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(85) [~~(84)~~] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(86) [~~(85)~~] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(87) [~~(86)~~] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(88) [~~(87)~~] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(89) [~~(88)~~] "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(90) [~~(89)~~] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(91) [~~(90)~~] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(92) [~~(91)~~] "Reclamation" is defined in KRS 350.010.

(93) [~~(92)~~] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(94) [~~(93)~~] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(95) [~~(94)~~] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(96) [~~(95)~~] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(97) [~~(96)~~] "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(98) [~~(97)~~] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(99) [~~(98)~~] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining

and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(100) [~~(99)~~] "SCS" means Soil Conservation Service.

(101) [~~(100)~~] "Secretary" is defined in KRS 350.010.

(102) [~~(101)~~] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(103) [~~(102)~~] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(104) [~~(103)~~] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(105) [~~(104)~~] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(106) [~~(105)~~] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(107) [~~(106)~~] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(108) [~~(107)~~] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(109) [~~(108)~~] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(110) [~~(109)~~] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(111) [~~(110)~~] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(112) [~~(111)~~] "Steep slope" means any slope of more than twenty (20) degrees.

(113) [~~(112)~~] (a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(114) [~~(113)~~] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(115) [~~(114)~~] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(116) [~~(115)~~] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(117) [~~(116)~~] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(118) [~~(117)~~] "Surface coal mining operations" is defined in KRS 350.010.

(119) [~~(118)~~] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(120) [~~(119)~~] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S.

EPA's regulations for waste water and analyses (40 CFR 136).

(121) [~~(120)~~] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(122) [~~(121)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(123) [~~(122)~~] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(124) [~~(123)~~] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(125) [~~(124)~~] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(126) [~~(125)~~] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(127) [~~(126)~~] "TRM" means Technical Reclamation Memorandum.

(128) [~~(127)~~] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(129) [~~(128)~~] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(130) [~~(129)~~] "USDA" means United States Department of Agriculture.

(131) [~~(130)~~] "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(132) [~~(131)~~] "USGS" means United States Geological Survey.

(133) [~~(132)~~] "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(134) [~~(133)~~] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(135) [~~(134)~~] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(136) [~~(135)~~] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 14, 1992
FILED WITH LRC: July 15, 1992 at 10 a.m.

JUSTICE CABINET
Department of Corrections
(As Amended)

500 KAR 10:001. Definitions.

RELATES TO: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
STATUTORY AUTHORITY: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
NECESSITY AND FUNCTION: The Kentucky State Corrections Commission shall make grants to assist local jurisdictions in the implementation and operation of community corrections programs. This administrative regulation **defines the terms to be used in 500 KAR Chapter 10.** [~~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) [~~(4)~~] "Board" **means the board specified in KRS 196.725,** [~~shall mean a board consisting of at least eight (8) community members who are responsible for developing and implementing a community corrections program plan.~~]

(2) [~~(7)~~] "Cabinet" **means** [~~shall mean~~] the Justice Cabinet.

(3) [~~(6)~~] "Commission" **means** [~~shall mean~~] the Kentucky State Corrections Commission.

(4) [~~(8)~~] "Department" **means** [~~shall mean~~] the Department of Corrections.

(5) [~~(1)~~] "Eligible applicant" **means** [~~shall mean~~] any local government agency or combination of agencies, private nonprofit or charitable organization who has an established community corrections board.

(6) [~~(9)~~] "Grant funds" **means** [~~shall mean~~] funds awarded by the

commission for implementing a program plan.

(7) [~~(5)~~] "Program plan" **means** [~~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.

[~~(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.~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

JUSTICE CABINET
Department of Corrections
(As Amended)

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

RELATES TO: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
STATUTORY AUTHORITY: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
NECESSITY AND FUNCTION: This administrative regulation is necessary to provide the application process and administrative procedures for the community corrections grant programs enacted by the General Assembly in **KRS 196.710** [~~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 **KRS 196.705** [~~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 **KRS 196.705** [~~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) **Grant funds shall be disbursed upon receipt of monthly reports of actual expenditures incurred.** [~~No program can collect for fees from offenders participating in the program except those fees specifically ordered by the court.~~]

Section 5. Award Procedure. (1) The director shall forward copies of the grant application form hereby incorporated by reference to members of the commission who shall vote on the applications within sixty (60) days of the final deadline. The commission shall make their decision based on priorities established by the commission. The director shall notify the recipient(s) of the grant(s) award(s) within two (2) weeks of the decision.

(2) Grants shall be made on a year-to-year basis with consideration for continued funding until June 30, 1994 after review of submitted progress reports and audit reports. No continuation funding shall be provided to a program which has failed to reduce prison commitments.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

JUSTICE CABINET
Department of Corrections
(As Amended)

500 KAR 10:030. Community corrections board.

RELATES TO: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
STATUTORY AUTHORITY: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
NECESSITY AND FUNCTION: This administrative regulation is necessary to provide for the makeup and duties of the community corrections board enacted by the General Assembly in **KRS 196.710** [~~the 1992 Acts, ch. 255, §3~~].

Section 1. Appointments. The appointment of members to the community corrections board shall be in accordance with **KRS 196.710** [~~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 **KRS 196.710** [~~1992 Acts, chapter 255 and the articles of incorporation~~].

Section 3. Reporting Requirements. (1) The board shall submit a minimum of quarterly progress reports to the director in a format approved by the department.

(2) Deviations from the approved plan or budget shall first be approved by the director. An annual independent audit shall be completed and submitted to the director.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

JUSTICE CABINET
Department of Corrections
(As Amended)

500 KAR 10:040. Annual review for compliance.

RELATES TO: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
STATUTORY AUTHORITY: **KRS 196.710** [~~1992 Acts, ch. 255, §3~~]
NECESSITY AND FUNCTION: This administrative regulation is necessary to provide for the annual review of the community corrections program enacted by the General Assembly in **KRS 196.710** [~~the 1992 Acts, ch. 255~~].

Section 1. Review Process. During each fiscal year, the director shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and submit a report to the commission.

(1) If the director determines that there is a reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded, notice of such findings shall be submitted to the commission.

(2) Thirty (30) days following such notice, the board shall determine if there is substantial compliance or satisfactory progress being made to achieve compliance.

(3) The director may suspend all or any portion of a grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

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

603 KAR 5:110. Permits for moving overdimensional house trailers [~~**mobile homes which do not exceed fourteen (14) feet in width**~~].

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue permits for the movement of house trailers exceeding legal dimensions but which do not exceed sixteen (16) feet in width. This administrative regulation establishes for house trailers [~~which do not exceed fourteen (14) feet in width~~] the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety and convenience.

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

(2) "Fully-controlled limited access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall not have an at-grade highway crossing or intersection. [~~"National holiday" means New Year's Day, Memorial Day (as observed on the last Monday in May), Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.~~]

(3) "House trailer" means a mobile home or manufactured home but does not mean a modular home.

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

(5) "Overdimensional" means that the towing motor vehicle combined with the house trailer exceeds the dimension limits set forth in 603 KAR 5:070.

[~~(6) [(5)] "Paved or stabilized shoulder" means a shoulder or berm of a highway constructed of portland cement concrete, bituminous concrete, bituminous seal or crushed aggregate. It shall not include a shoulder constructed of earth, sod, grass or curb and gutters.~~]

Section 2. Permit Application. (1) Application for a permit to move an overdimensional [a] house trailer on a Kentucky state-maintained highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622.

(2) A single trip permit application or request shall specify the following:
(a) The year and make of the towing vehicle;
(b) The vehicle's license plate number;
(c) The maximum weight for which the vehicle is registered; [~~and~~]
(d) The state of registration of the vehicle;
(e) Name and address of the owner;
(f) The dates of travel;
(g) The serial number of the house trailer; and
(h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being applied is registered in a state other than Kentucky, the vehicle shall be either:
(a) Apportioned registered to operate in Kentucky; or
(b) In compliance with KRS 281.752.

(4) [~~(3)~~] An annual permit application or request shall in writing specify the following information relating to the motor vehicle:
(a) Year and make; [~~rated capacity;~~]
(b) Vehicle identification number;
(c) License plate number;
(d) The maximum weight for which it is registered; [~~and~~]
(e) The state of apportioned registration, if not registered in Kentucky; [~~and~~]
(f) Name and address of the motor carrier operating or the owner of the towing vehicle; and [~~. In addition, it shall specify~~]
(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier [~~and the routes of travel requested~~].

(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overdimensional house trailers and shall at all times comply with them.

Section 3. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation

and KRS 189.270:

(1) A [No] house trailer of a width greater than eight and one-half (8 1/2) feet shall not be towed on any highway listed in 603 KAR 5:070, Section **3(1)** [2(2)(b)];

(2) A [nor shall any] house trailer with a width greater than eight (8) feet shall not be towed on any state-maintained highway not listed in 603 KAR 5:070, Section **3(1)** [2(2)(b)]; and [other Kentucky highway unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.]

(3) A [(2) No] house trailer with a combined length of house trailer and towing vehicle greater than sixty-five (65) [sixty (60)] feet shall be towed upon any Kentucky highway [unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers].

Section 4. Annual Permits. (1) A[n annual] permit shall not be issued for the movement of a house trailer in excess of sixteen (16) [twelve (12)] feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(2) Prior to a movement of a house trailer under the provisions of an annual permit, the permit holder shall scout and evaluate the entire route proposed to be used for the movement of the overdimensional house trailer. The evaluation shall include, but not be limited to, the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(g) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available which might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overdimensional house trailer, and if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move of the house trailer. The route selected by the permit holder shall be the safest available. [be on highways specified on the annual permit.]

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overdimensional house trailer, the permit holder shall either:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move that house trailer over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

[(3) Annual permits for the movement of house trailers may be issued only to dealers and manufacturers located within the Commonwealth of Kentucky; to certificated motor carriers who are properly licensed as motor carriers by the Department of Vehicle Regulation; and to private owner residents of Kentucky for movements of their personally owned house trailers.

(4) Each towing vehicle for house trailers greater than the legal width shall be registered in Kentucky for a gross weight of not less than 22,000 pounds, have dual wheels on the rear and be rated at least one and one half (1 1/2) ton capacity.]

(6) [(5)] An annual permit shall not be issued or used for the movement of a house trailer:

(a) If the length of the house trailer [and towing unit combined] exceeds eighty (80) [ninety five (95)] feet in length; or

(b) If the height of the combination house trailer and towing vehicle exceeds thirteen and one-half (13.5) feet.

(7) Acceptance and use of the annual permit is the permit holder's acceptance of the liability associated with the move of the overdimensional house trailer.

Section 5. Single Trip Permits. (1) A single trip permit shall not be valid for [no] more than ten (10) days.

(2) A single trip permit shall not be issued for any [unit, including towing vehicle and] house trailer [combined,] which exceeds eighty (80) [ninety five (95)] feet in length or sixteen (16) [fourteen (14)] feet in width inclusive [exclusive] of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(3) A single trip permit shall specify the highways to be used in the movement of the house trailer.

Section 6. Permit Costs. (1) The **overdimensional permit fees for the movement of a house trailer** [$500 issuance cost of an annual permit, the twenty (20) dollar cost of [or] a single trip permit for the movement of a house trailer with a width of fourteen (14) feet or less and the forty (40) dollar cost of a single trip permit for the movement of a house trailer which exceeds fourteen (14) feet in width,] as set forth in KRS 189.270, shall apply to the towing vehicle; and

(2) The cost shall not be prorated.

Section 7. Escort Vehicles [and Lighting Requirements]. (1) When traveling under the provisions of either a single trip or annual permit, the permit holder shall provide escort vehicles as follows:

(a) On a highway of four (4) or more lanes:

1. If the house trailer exceeds twelve (12) feet in width and is fourteen (14) feet or less in width, he shall provide one (1) rear escort vehicle; or

2. If the house trailer exceeds fourteen (14) feet in width, he shall provide one (1) front and one (1) rear escort vehicles.

(b) No more than one (1) mile after exiting a highway of four (4) or more lanes or on a highway of less than four (4) lanes [which has a total pavement width of twenty four (24) or more feet] [and paved or stabilized shoulders of four (4) or more feet]:

1. If the house trailer exceeds ten and one-half (10.5) feet in width and is twelve (12) feet or less in width, he shall provide one (1) front escort vehicle; **or**

2. If the house trailer exceeds twelve (12) feet in width [and is fourteen (14) feet or less in width], he shall provide one (1) rear and one (1) front escort vehicles. [; or]

[3. If the house trailer exceeds fourteen (14) feet in width, he shall provide two (2) front and one (1) rear escort vehicle.] [One (1) lead escort vehicle is required for the movement of house trailers greater than the legal width but not exceeding twelve (12) feet wide on all two (2) lane highways.

(2) When a house trailer more than twelve (12) feet wide is moved, one (1) escort shall be required in the rear of each house trailer on highways with four (4) or more lanes. On highways of two (2) lanes, two (2) escort vehicles shall be required for each house trailer, one (1) in front and one (1) in the rear.

(3) Escort vehicles, both front and rear, shall be required where highway conditions dictate the need.]

(2)(a) On open highways escort vehicles shall be spaced approximately 300 feet from the towing vehicle and house trailer, except as provided in Section 8 of this regulation.

(b) In cities or congested areas this distance shall be shortened to protect other traffic.

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

(4) The towing unit shall maintain radio contact with each required escort vehicle.

(5) Each required escort vehicle shall display one (1) of the

following:

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

(b) A warning sign which:

1. Is clearly legible;

2. States "OVERSIZE LOAD" or "WIDE LOAD" in black letters on a yellow background; and

3. Is placed:

a. On the front of a front escort; [or]

b. On the rear of a rear escort; or

c. The top of the escort vehicle so that it is visible from both the front and rear.

Section 8. Traffic Control. (1) If a house trailer while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the house trailer until the house trailer has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

[~~(2) When two (2) lead escort vehicles are required, the first lead escort vehicle shall be responsible for traffic control between the overdimensional house trailer and the next intersection. When the highway is too narrow to allow the house trailer to be moved without encroaching on the approaching lane of traffic:~~

~~(a) All approaching traffic shall be stopped by the first lead escort;~~

~~(b) The rear escort shall prevent trailing traffic from passing the house trailer until the house trailer can be moved sufficiently to the right to allow other traffic to move safely past the house trailer; and~~

~~(c) The [second lead escort] vehicle shall remain with the overdimensional house trailer as specified in Section 7 of this regulation in order to control traffic entering from a side street.~~

~~(3) When the highway and stabilized shoulder are sufficiently wide to allow approaching traffic to safely pass, the first lead escort shall remain just in front of the second lead escort in order not to confuse oncoming traffic.~~]

(2) [~~(4)~~] [~~(3)~~] An overdimensional house trailer shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the house trailer being moved, the escort vehicles and house trailer shall exit the highway wherever there is sufficient space to do so.

Section 9. Flags, Lights and Signs. (1)(a) [~~(4)~~] Red or orange fluorescent flags at least eighteen (18) inches square shall be displayed on both sides of the towing vehicle or house trailer at the widest extremity and two (2) more at the extreme rear of the house trailer to indicate maximum width.

(b) The flags shall be securely fastened to the house trailer by at least one (1) corner or securely mounted on a staff.

(2)(a) [~~(5)~~] Amber flashing lights may be used on both the escort and towing vehicles if the house trailer's [~~unit's~~] width does not exceed twelve (12) feet.

(b) If the house trailer exceeds twelve (12) feet in width, all escort vehicles and the towing vehicle shall have an amber flashing light on the roof.

(3) The house trailer shall be equipped with four (4) amber flashing lights.

(a) One (1) shall be located on each outermost front and each outermost rear corner of the house trailer spaced not less than six (6) feet above the roadway.

(b) The permit holder may locate the two (2) front amber flashing lights on the truck mirrors rather than the front outermost corners of the house trailer if the mirrors extend out as far as the outermost front corners of the house trailer.

(4) Each [~~(6) All~~] overdimensional house trailer [~~mobile homes~~] and towing vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005. All running lights shall be on while the unit is in motion.

(5)(a) [~~(7)~~] Oversize load signs shall be placed on the front of the towing vehicle and the rear of the house trailer any time it is operating on a highway.

(b) Each warning sign:

1. Shall state in black letters on a yellow background, "OVERSIZE LOAD" or "WIDE LOAD"; and

2. Shall be at least seven (7) [~~six (6)~~] feet long and eighteen (18) inches high with a brush stroke of at least one and four-tenths (1.4) inches.

Section 10. [~~8.~~] Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the annual permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer per annual permit shall be allowed during the year of validity of the annual permit. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

[~~Section 9. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any house trailer hauled under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.~~]

Section 11. [~~10.~~] Presentation of Permits. (1) The appropriate overdimensional permit [~~Permits~~] shall be carried in the towing vehicles at all times. [~~and~~]

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

(3) A copy of an annual permit shall only be considered authenticated by the Department of Vehicle Regulation if it has been embossed with a stamp by the Department of Vehicle Regulation.

(4) An unauthenticated photocopy of an annual permit shall not be valid.

Section 12. [~~11.~~] Permit Validity. (1) Permits shall be [~~are~~] valid during:

(a) [~~only~~] Daylight hours; and

(b) [~~as defined in Section 1 of this regulation,~~] From Monday through Saturday noon for house trailers twelve (12) feet wide or less. [~~, except for those periods before, during and after national holidays. In connection with these holidays,~~]

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

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

(4) [~~(2)~~] Permits used for the movement of house trailers more than twelve (12) feet in width shall [~~are~~] not be valid on Saturday or Sunday.

(5) In [~~addition, in~~] Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of house trailers fourteen (14) feet wide or less but more than twelve (12) feet wide shall [~~they are~~] only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one-half (1/2) hour after sundown, local prevailing time.

(6) Permits used for the movement of house trailers greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time.

(7) [~~(3)~~] If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours.

(8) A permit shall not be valid if the combined gross weight of the towing vehicle and house trailer exceeds the registered weight of the towing vehicle.

Section 13. [~~12.~~] Movement on Two (2) or Four (4) Lanes. Moves of house trailers more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

Section 14. [~~13.~~] Weather Conditions. (1) Moves of house trailers more than twelve (12) feet wide shall not [~~cannot~~] be made on any highway:

(a) When wind velocity exceeds twenty-five (25) MPH; or

(b) When adverse weather conditions would cause these moves to be dangerous;

(c) [~~. House trailers that exceed twelve (12) feet in width shall not be moved~~] When the road is partially or fully covered by sleet, snow, or ice; or

(d) When visibility is unduly impaired by rain, sleet, snow, fog, or other adverse weather condition [~~etc~~].

(2) Moves of house trailers which exceed fourteen (14) feet in width shall not be made:

(a) On two (2) lane highways when turf or dirt shoulders are soft or muddy; or

(b) On any wet highway.

Section 15. Brakes. (1) [~~14. Breaks.~~] The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a house trailer shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) House trailers which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assembles to meet the braking distance specified in this section.

(3) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(4) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 16. [~~15.~~] Speed Limit. [~~(1)~~] The speed limit for the movement of house trailers greater than twelve (12) feet wide shall be:

(1) On interstate and other fully controlled limited access highways, [~~is~~] forty-five (45) MPH.

(2) On other highways, [~~the speed limit is~~] thirty-five (35) MPH, unless posted minimum speed exceeds this, then the speed limit may be increased to the minimum posted speed.

Section 17. Liability of the Permit Holder. The permit holder shall be responsible to pay for or replace any sign, traffic control device, guardrail or other property damaged or destroyed during the move of the house trailer.

Section 18. Repeal. 603 KAR 5:111, Permits for moving mobile homes in excess of fourteen (14) feet in width, is repealed.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
J. M. YOWELL, State Highway Engineer
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 10, 1992 at 11 a.m.

DEPARTMENT OF EDUCATION
Office of Commissioner
(As Amended)

701 KAR 5:075. Antinepotism certifications of superintendents.

RELATES TO: KRS 160.380
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 160.380(2) prohibits local school superintendents from hiring their relatives or relatives of local school board members, with certain limited exceptions. KRS 160.380(2) also prohibits the employment of a principal's relatives in the principal's school, with certain limited exceptions. This **administrative** regulation requires certification by each superintendent as to compliance with KRS 160.380(2). This requirement is intended to identify any existing nepotism violations and to discourage and eliminate nepotism violations.

Section 1. (1) By October 1 of each year, **a** [~~each~~] local school superintendent shall file with the Department of Education, Office of Legal Services, a signed and sworn statement providing information as to compliance with the antinepotism provisions of KRS 160.380(2)(e), (f), and (g).

(2) The statement filed by **a** [~~each~~] superintendent shall be [~~a~~] completed **on an** "Antinepotism Statement of Local Superintendent," which is a form dated June 1992 and which is incorporated herein by reference.

(3) The form **may be obtained** [~~is available 8 a.m. to 4:30 p.m., Monday through Friday.~~] from the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601**, Monday through Friday, 8 a.m. to 4:30 p.m**.

Section 2. Failure to comply with Section 1 of this administrative regulation may be considered willful neglect of duty or nonfeasance in violation of KRS 156.132. Providing false information on the "Antinepotism Statement of Local School Superintendent" form may be considered misconduct in violation of KRS 156.132.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(As Amended)

702 KAR 3:260. Restructuring revenue bond issues.

RELATES TO: KRS 58.150, 156.200, 157.440, 160.476, 160.477, 162.080, 162.090
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 157.440 permits taxation to the maximum approved rate for local school districts with a special voted building fund tax that had a finite expiration date. The ability to provide facilities that are needed in these districts was limited due to the limited time available through the approved special voted building fund tax. Since KRS 157.440 provided tax revenues beyond the

expiration date of the special voted building tax fund, it is necessary to provide districts the opportunity to restructure their debt in a way that takes into consideration the tax revenue that will be realized beyond the expiration date. This **administrative** regulation sets forth the criteria that permit school districts to restructure revenue bond issues.

Section 1. The following conditions shall exist before a school district may restructure bonds:

(1) The school district shall have had on July 13, 1990, a special voted building fund tax with a finite expiration date.

(2) The district's outstanding debt service shall have been specifically tailored to mature within the life of the special voted building fund tax. The district's debt service shall be constricted within the limitation of the special voted building fund tax to the point that additional funding of capital improvements from the present to the tax expiration date are severely restricted.

(3) The average annual debt service of the district in the period from the present to the expiration date of the special voted building fund tax shall be at least three (3) times the average annual debt service in the period following the expiration of the tax.

Section 2. **A** [~~No~~] district using or committing general fund revenues for existing debt service shall **not** be eligible to participate in a restructuring of revenue bonds.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

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

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.160, 189.540
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt **administrative** regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to adopt **administrative** regulations to govern the design and operation of school buses. This **administrative** regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. **(1) A** [~~All~~] local board[~~s~~] of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and [~~such~~] events related to **the** [~~such~~] schools.

(2) The medical examination shall include tests for:

(a) Hearing and vision disorders;

(b) Emotional instability; and

(c) [~~for~~] Serious medical conditions including:

1. Diabetes;

2. Epilepsy;

3. Heart disease; and

4. Other chronic or communicable diseases if indicated in the opinion of the examining physician.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) **A** [~~All~~] medical examination[~~s~~] of **a** [~~the~~] school bus driver[~~s~~] shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

(5) The form**s required by subsection (4) of this section**, TC 94-35, July 1990, and Supplement to TC 94-35, **are** [~~is~~] incorporated by reference **and** may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, [~~8 a.m. to 4:30 p.m.,~~] Monday through Friday**, 8 a.m. to 4:30 p.m.**

Section 2. (1)**(a)** [~~Prior to initial employment or after any break in service (excluding summers),~~] A criminal records and driving history check [~~on all new school bus drivers~~] shall be performed by **a** local district[~~s~~] **on new school bus drivers both:**

1. Prior to initial employment; or

2. After a break in service (excluding summers).

(b) Employment shall be contingent upon **the requirements of paragraph (a) of this subsection** [~~such a check~~].

(c) A school bus driver shall immediately report to the local superintendent or his designee **a:**

1. [~~any~~] Revocation of his driver's license; [~~or~~]

2. Conviction for DUI; or

3. **Conviction for** reckless driving.

(2)**(a)** Drug tests shall be **conducted in accordance with the Kentucky Department of Education, Division of Pupil Transportation drug testing procedures, KDE-1530, and shall be** a condition of initial employment for Kentucky:

1. School bus drivers;

2. School bus mechanics; and

3. [~~any~~] Other local school district personnel who drive a school bus[~~, in accordance with the Kentucky Department of Education, Division of Pupil Transportation drug testing procedures. Drug tests in accordance with the drug testing procedures~~].

(b) The requirements of paragraph (a) of this subsection shall also be required of **a** [~~any~~] school bus driver or school bus mechanic who is involved in a vehicle accident resulting in bodily injury or property damage over $1,000, except an accident in which the district's vehicle is struck while legally parked.

(c) The drug testing procedures **found in** KDE-1530, July 1992, are incorporated herein by reference, a copy of which may be **inspected, copied or** obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, [~~from 8 a.m. 4:30 p.m.~~] Monday through Friday**, from 8 a.m. to 4:30 p.m.**

(3)**(a)** [~~These~~] Employees required by **subsection (2)(b) of this section** [~~this regulation~~] to undergo a drug test [~~as a result of a vehicle accident~~] shall take the drug-alcohol test at the clinic selected by the district immediately following his return to the bus compound, if that return is during normal working hours.

(b) If the employee returns to the bus compound after normal working hours or is unable to return to the bus compound following the accident, the employee shall take the drug-alcohol test at the clinic assigned to that district the morning of the next [~~working~~] day.

(c) In the event the employee is confined to a hospital for treatment of injuries arising out of the accident and is [~~thereby~~] unable to report to the clinic assigned to that district the morning of the next [~~working~~] day, the employee shall take the drug-alcohol test at the treating hospital.

(4)**(a) If** [~~In the event~~] an employee is taking prescription medica-

tion(s) under the care of a physician, the bottle, vial or container issued by the pharmacist shall be brought in to the clinic administering the drug-alcohol test at the time of the test or within twenty-four (24) hours of the test.

(b) The [~~Each~~] employee and medication(s) shall be reviewed individually and an evaluation **shall be** made by the clinic and the superintendent of the local school district, or his designee, regarding medication(s) with potential negative effects on safety performance.

(c) Upon completion of an evaluation, [~~In such an instance~~] the employee may be referred by the district to the prescribing physician for the purpose of determining the possibility of:

1. Changing to an alternative prescription without potential negative effects on safety performance;

2. Being placed on medical leave; or

3. Being directed to follow other appropriate action as deemed necessary by the superintendent of the local school districts.

(5) An employee's failure to comply with the district's request to have the drug-alcohol test administered in accordance with this policy shall result in immediate termination.

(6) If the required drug test results in a confirmed positive test after a vehicle accident, the employee may request a blood plasma or blood serum test to contest the positive urine test.

(7) [~~(2)~~] **A** [~~No~~] person shall **not** be employed as a school bus driver **if** [~~who has been~~] convicted of driving **a** [~~any~~] motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. **A** [~~No~~] person shall **not** drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. **A** [~~Any~~] driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) **A** [~~No~~] person shall **not** drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. **A** [~~No~~] person shall **not** drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear [~~such~~] properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. [~~A driver shall not start driving a school bus until his 18th birthday.~~] **Effective** [~~After~~] April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, [~~all~~] Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2) [~~A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each drivers record. Skill levels shall be demonstrated in:~~]

(a) **Prior to acceptance into the driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in the Division of Pupil Transportation curriculum.**

(b) The driver applicant's score sheet shall become a part of the driver's record.

(c) A driver shall demonstrate the following skill levels:

1. Vehicle knowledge;

2. [~~(b)~~] Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:

a. [~~1.~~] Ninety (90) degree left hand turns;

b. [~~2.~~] Ninety (90) degree right hand turns;

c. [~~3.~~] Straight ahead;

d. [~~4.~~] Irregular surface maneuverability at speeds;

e. [~~5.~~] Backing ability using mirrors only; and

f. [~~6.~~] Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations - one (1) hour;

(b) Driving fundamentals - one (1) hour;

(c) Care and maintenance - one (1) hour;

(d) Critical situations - one (1) hour;

(e) Accidents and emergency procedures - one (1) hour;

(f) Pupil management - one (1) hour;

(g) First aid - one (1) hour;

(h) Special education transportation - five-tenths (.5) hour;

(i) Extracurricular trips - five-tenths (.5) hour; and

(j) Vehicle operations - three (3) hours.

(k) Vehicle control at speed - one (1) hour; and

(l) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days **the following**:

(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days **of driving**.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) **A driver who does not complete the training update and receritification as required by subsection (2) of this section shall be required to complete the beginning training program.** [~~Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program.~~]

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it neces-

sary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not [~~knowingly~~] permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not [~~knowingly~~] permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. (1) If a pupil's conduct on the bus [~~is such that it endangers the lives and morals of the other people on the bus and~~] makes it unsafe for the bus to continue on its route, [~~and when requested by the driver to desist from such conduct and the pupil does not comply,~~] it shall be the duty of the driver to:

(a) Make a determination as to the potential danger to other students on the bus; and

(b) Take action against the student either by:

1. Requesting that the student stop engaging in the prohibited conduct;

2. Ordering the student to leave the bus;

3. Ejecting the pupil from the bus or sending for assistance if the student fails to comply with the driver's order or request.

(2) [~~order the pupil to leave the bus. Should the order be ignored, the driver shall eject the pupil from the bus or send for assistance, whichever the circumstance dictates.~~] Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, [~~When ejection from the bus is required,~~] the driver shall notify the **following parties of the action taken as soon as possible:**

(a) The principal of the school where the pupil attends; **or**

(b) The district superintendent; **and**

(c) The student's parent or legal guardian. [~~or some other school authority of the action taken as soon as possible.~~]

Section 25. **(1)** The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level.

(a) The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(b) After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding.

(c) When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks.

(2)(a) In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks.

(b) Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor [~~knowingly~~] permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this **administrative** regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment. [~~A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.~~]

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
(As Amended)

702 KAR 7:010. Terms and months.

RELATES TO: KRS 156.031, 158.060, 158.070
STATUTORY AUTHORITY: KRS 156.031, 156.070, 158.070
NECESSITY AND FUNCTION: KRS 156.031 requires that **administrative** regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 158.060 and 158.070 define and establish the school day, school month, and school term, and direct the State Board for Elementary and Secondary Education to adopt regulations governing the use of school days. This **administrative** regulation is necessary for efficient management, control and operation of schools and to insure uniformity in the school term, month and day in all approved schools of the state.

Section 1. The minimum school term of 185 days with a minimum six (6) actual instructional hour day shall consist of nine (9) twenty (20) day school months and one (1) partial school month of five (5) days. [~~Schools shall be in session a minimum of six (6) actual instructional hours on each of these days except as otherwise provided by KRS 158.060, 158.070, the 1992 General Assembly budget bill, and regulations of the State Board for Elementary and Secondary Education.~~]

Section 2. (1)(a) If either a school district, or a [~~any~~] school within a school district, during any school year, misses a total of five (5) hours or less on all school days shortened due to an emergency, this time shall not have to be made up and [~~no~~] shortened school day report shall **not** be submitted to the Department of Education for those hours.

(b) [~~Any~~] Time missed on shortened school days over the five (5) hours shall be made up and these hours beyond the five (5) shall be reported to the Department of Education on a shortened school day report.

(c) Partial days missed over the five (5) hours may be made up by extending the regular school day upon approval of the Department of Education.

(d) Those school districts already going longer than the six (6) hour minimum instructional day shall be allowed to count that extra time toward making up partial days missed over the five (5) hours forgiven but only upon approval of the Department of Education.

(e) The extended school day to make up hours missed beyond the five (5) hours shall start upon notification to the Department of Education, pending approval.

(f) Extending the school day or counting time beyond the six (6) hour minimum instructional day to make up time missed on shortened school days due to emergency shall be allowed only after the time is missed.

(2)(a) A [~~All~~] full school day[~~s~~] missed shall be made up by putting these full days back in the school calendar.

(b) [~~All~~] School districts shall have a minimum of 175 instructional days each school year except as provided in KRS 158.070 which shortens the minimum term for the 1992-94 biennium to allow for more professional development.

(c) The only exception shall be in extreme situations as explained in KRS 158.070(3)(a), (b), and (c).

(d) Disaster days as outlined in KRS 158.070(3)(b) may [~~shall~~] be approved by the Commissioner of Education and shall be reported to [~~recommended by the chief state school officer and approved by~~] the State Board for Elementary and Secondary Education at its next regularly scheduled meeting [~~only in catastrophic situations~~].

(e) Only under dire circumstances shall any school district be excused from the required 175 day instructional year.

(f) Except as provided in paragraph (b) of this subsection, [~~no~~] school district shall **not** be considered for local disaster days unless the district has missed more than twenty (20) full teaching days system-wide. All school districts shall make up at least the first twenty (20) full teaching days missed in a school year by adding these days back into the school calendar.

(g) [~~(b)~~] The Commissioner of Education [~~chief state school officer and the State Board for Elementary and Secondary Education~~] shall continue considering requests for disaster days from school districts where one (1) school, or only part of the district, is forced to miss school due to an emergency on a particular day.

[~~(c) In the event a catastrophic situation occurs after the May meeting of the State Board for Elementary and Secondary Education, the chief state school officer shall act upon any request by local school districts for disaster days. Such action shall be reported to the State Board for Elementary and Secondary Education at its next regularly scheduled meeting.~~]

Section 3. **If a school elects to be out of session, either for a reason not established by statute or by administrative regulation or which may be in excess of the exceptions, those days shall not be counted in the minimum school term.** [~~Each day on which school is not in session for any reason other than those specified by State Board for Elementary and Secondary Education regulations or in excess of the limitations therein provided, shall not be counted in the minimum school term.~~]

Section 4. A [~~No~~] report shall **not** be made until the completion of a twenty (20) day school month except that a report for the tenth school month shall be made at the conclusion of the school term.

Section 5. (1) Lack of compliance with minimum school day requirements shall, pursuant to KRS 157.350, result in appropriate proportional reductions in funding under the Support Educational Excellence in Kentucky Program.

(2) The following shall constitute the only **board approved**

[approvable] activities to be conducted during the minimum six (6) hour instructional school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades K-12":

(b) Enrichment courses approved by the State Board for Elementary and Secondary Education;

(c) Experimental courses or programs approved by the State Board for Elementary and Secondary Education;

(d) Cocurricular activities, such as club meetings and assemblies, as long as **these activites** [such] are related directly to the instructional program and are scheduled so as to minimize absences from classroom instruction; and

(e) Homeroom in the morning and afternoon for checking attendance. These periods shall not exceed ten (10) minutes per homeroom or twenty (20) minutes daily.

Section 6. The school day shall not be shortened on regularly scheduled school days except in cases of emergency declared by the local superintendent in accordance with policies of the local board of education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

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

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070
STATUTORY AUTHORITY: KRS 156.070, 158.070, **Acts 1992 c. 398, Section 1(7)**
NECESSITY AND FUNCTION: KRS 158.070 requires schools to provide continuing education beyond the minimum school term for students in need of [such] extended services and requires the State Board for Elementary and Secondary Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide **these** [such] services. **The function of this administrative regulation is to implement the requirements of Acts 1992, c. 398, Section 1(7).** [This regulation implements that duty.]

Section 1. Definitions. (1) "Continuing education" means extended school services.

(2) "Extended school services" means instructional and support [related] services provided by school districts for students who need additional time to achieve academic expected outcomes. **These** [Such] services shall be provided at times separate from the regular school day, regular school week, or minimum school term.

(3) "Support [Related] services" means noninstructional components of a program which are provided to enable the student to realize the benefits of the instructional program. **These** [Such] services may include [but are not limited to] transportation, school-based counseling, [therapy,] parent training for follow through, and referrals [arrangements] for social, health and financial assistance through appropriate service agencies.

(4) "Instructional materials [and equipment]" means expendable and nonexpendable books, kits, software and manipulatives, but does not include computer hardware.

(5) "School district", as used in this **administrative regulation** [section], means a local public education agency.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be:

(a) To sustain students' present level of performance to [and] prevent them [students] from falling behind; [and]

(b) To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time without additional assistance; and

(c) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.

(2) The instructional program shall include:

(a) A method to assess the priority educational needs of each individual student and to determine the expected competencies to be exhibited by the student at the end of the extended program;

(b) An appropriate educational program designed for the individual student which assists the student in mastering the expected competencies within the timelines specified by the program;

(c) An ongoing method of informal and formal assessment to document the student's progress toward mastery of the expected competencies;

(d) A schedule of services for each student which shall be of the duration and regularity necessary to allow mastery of the expected competencies within a reasonable and projected timeline;

(e) Teaching techniques which are supportive of the regular school program and which provide continuity with the regular program; and

(f) Varied instructional approaches **such as:**

1. [which include but are not limited to those which are] Tutorial;

2. Diagnostic or prescriptive;

3. Computer-assisted; and

4. [in addition,] Counseling **if** [when such service is] needed to assist the student in overcoming social or behavioral problems which interfere with the student's academic success.

(3) The instructional program may utilize a variety of scheduling models including [but not limited to]:

(a) Extended day programs which are scheduled any time outside of the regular school day and which may include a night program;

(b) Saturday programs which operate for a full or half day over a specified period of time;

(c) Summer programs which operate a full or half day during the months of June, July [and/]or August; and

(d) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) Teachers providing instruction in extended school programs which are offered for academic credit for purposes of promotion or graduation shall meet the same professional qualifications as teachers who are employed in the regular school program.

(5) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive **these** [such] services until such time as they graduate form the twelfth grade or become twenty one (21) years of age, whichever comes first.

Section 3. Student Selection. Selection of pupils to receive extended school services shall be as follows:

(1) Prior to adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students, each school district shall select pupils as described in Section 2(1) of this administrative regulation [to receive extended school services] who need additional instructional time to attain expected competencies. A student shall not be selected or assigned to receive extended school

services for disciplinary purposes or for any kind of in-school suspension.

(2)(a) A local board of education may mandate the attendance of eligible students to extended school services through the development of a policy which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(b) [~~Such~~] Conditions **for attendance** may include [~~but are not limited to~~]:

1. [~~(a)~~] The characteristics of the students who will be required to attend;

2. [~~(b)~~] A description of the criteria by which they may exit the extended school program or may no longer be required to attend;

3. [~~(c)~~] The conditions under which a targeted student may be excused from attendance; **and**

4. [~~(d)~~] The arrangements for transporting the students mandated to attend.

(c) The local school board shall include a copy of the policy in the district's application for funds through extended school services.

(3) [~~(2)~~] In assessing students' need for extended school services, [~~attainment of competencies,~~] the schools shall consider each student's performance in:

(a) Academic skill areas for a single subject or single class, application of such skills to everyday life situations, and integration of skills and experiences to acquire new information;

(b) School attendance when it negatively affects academic performance;

(c) Patterns of promotion or [;] retention [~~or dropping out~~];

(d) Physical and mental readiness for learning; and,

(e) When applicable, readiness for transition to work, postsecondary education or the military.

(4) Two (2) [~~(3) One (1)~~] or more of the following methods of documentation shall be used to verify which students shall be determined eligible:

(a) Teacher recommendation based upon classroom observation and anecdotal records or parent recommendation;

(b) Academic performance based upon formal and informal measurements of progress; and

(c) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(5) [~~(4)~~] Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. **These** [~~Such~~] procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(6) [~~(5)~~] School districts shall inform parents and guardians of extended school services which will be offered in the school system including:

(a) A general notification which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies;

(b) A specific notification to parents or guardians of their child's [~~identification of~~] eligibility to receive extended school services;

(c) Procedures for parents of guardians to request reconsideration of their children's identification or lack of identification of eligibility for extended school services.

(7) [~~(6)~~] Upon adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students, each school district shall select pupils to receive extended school services who need additional instructional time to achieve the outcomes.

Section 4. Funding. [~~In fiscal years 1991 and 1992,~~] **(1)** Each school district shall be eligible to receive a grant award from available funds to provide extended school services. [~~In fiscal year 1991, available funds shall be the amount of the total appropriation less administrative costs which shall not exceed two (2) percent. In fiscal year 1992,~~] Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs and up to ten (10) percent which shall be reserved to fund innovative projects on a competitive basis.

(2) The chief state school officer shall determine the amount of the grant award for which each school district is eligible upon a formula approved annually by the State Board for Elementary and Secondary Education. [~~according to the following formula:~~

~~(1) Fifty (50) percent of available funds shall be distributed equally among school districts on the basis of average daily attendance (ADA) in the most recent school year.~~

~~(2) Fifty (50) percent of available funds shall be distributed to each school district based upon the most current data available for district average test score on a statewide administered test, district average dropout rate, and district economic deprivation rate as determined by the percent of students receiving free and reduced lunch.~~

~~(a) The following weights shall be applied to these factors:~~

~~TABLE~~

~~NCE TEST SCORE~~	~~WEIGHT~~
~~47.3 - 51.4~~	~~1~~
~~43.2 - 47.3~~	~~2~~
~~<43.2~~	~~3~~

~~DROPOUT RATE~~	~~WEIGHT~~
~~4.3>~~	~~3~~
~~2.9 - 4.3~~	~~2~~
~~1.5 - 2.9~~	~~1~~

~~ECON.DEPRIV.~~	~~WEIGHT~~
~~>58.0~~	~~4~~
~~40.3 - 58.0~~	~~3~~
~~<22.6 - 40.3~~	~~2~~
~~22.6~~	~~1~~

~~Weights generated for each school district in these three (3) categories shall be added together to generate a total weight for each school district.~~

~~(b) Each possible total weight shall be assigned a monetary value on a graduated scale by the chief state school officer. The amount of the monetary values shall be dependent upon the amount of funds equal to fifty (50) percent of the available funds for extended school services. The monetary value thus generated for each school district shall be multiplied by the district's total number of pupils in the primary school program through the twelfth grade to determine the allotment for each school district under this subsection.~~]

(3) [~~(1)~~] [~~(3)~~] To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, **a** [~~no~~] school district shall **not** receive a grant of less than $15,000.

(4) [~~(2)~~] [~~(4)~~] Grant awards shall be made to each school district upon approval by the chief state school officer of an application as prescribed in Section 5 of this **administrative** regulation. Beginning in FY 93, regular grant funds shall be available for use by school districts only in [~~throughout~~] the fiscal year in which the grant is awarded. [~~School districts shall be authorized to carry over such funds until September 30 of the succeeding fiscal year; however, in any fiscal year in which any school district has not fully budgeted and received approval for the grant funds for which it is eligible by April 15, such funds shall become available for reallocation to other school districts. School districts shall apply for reallocation funds to implement innovative extended school programs on a competitive basis. Grant awards for innovative programs shall be determined by the~~

~~chief state school officer. In fiscal year 1992, funds available for innovative projects shall include reallocation funds as well as reserved funds which shall consist of ten (10) percent of the total appropriation.~~]

(5)(a) [~~(3)~~] [~~(5)~~] Funds received for extended school services shall be expended for instructional and support [~~related~~] services necessary to provide an effective program.

(b) **These** [~~Such~~] services shall include salaries of personnel and may include instructional [~~,~~] materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.

(c) Transportation and [~~equipment, indirect costs, transportation, when necessary,~~] staff development related to the provision of extended school services are approvable support services. [~~, and other related services.~~]

(d) Funds for extended school services shall not be used for capital outlay.

(e) School districts are authorized to enter into contractual arrangements when needed to provide comprehensive extended school service programs.

(6) [~~(4)~~] [~~(6)~~] Appropriate financial records including separate ledgers for extended school services shall be maintained by each school district and such records as may be required shall be submitted to the Department of Education upon direction.

Section 5. Application for Funds. (1) School districts shall apply for funds to provide extended school services by submitting an application to the chief state school officer [~~no later than September 30 of each fiscal year~~] on forms provided by the Department of Education. **The Application for Extended School Services Funds may be obtained from the Kentucky Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 a.m.**

(2) The components which are scheduled to take place within the regular school term shall be submitted by July 1 of each fiscal year. The components [~~Notwithstanding the cutoff date, applications~~] may be amended [~~and specific components of applications submitted~~] until March 1 of the same [~~each~~] fiscal year.

(3) [~~(2)~~] Application for funds for any summer school component which takes place in June shall be included in the application for the regular school term in the same fiscal year. The funds for that portion of the summer school shall be expended by June 30.

(4) [~~(3)~~] Any summer school component which is scheduled to take place within July or August may be submitted and approved with the regular term application for the preceding fiscal year but shall be submitted no later than the preceding March 1 of the same calendar year. The component may be amended until the preceding June 15 of the same calendar year.

(5)(a) [~~(4)~~] [~~(2)~~] Applications shall include:

1. A description of the services to be provided and operated;
2. A statement of the needs to be met;
3. The methods to be used;
4. The projected number of students to be served and the selection criteria;
5. The facilities in which the program will be provided;
6. The evaluation methods; and
7. A budget for each separate component to be provided.

(b) The application shall also provide the number and type of certified and noncertified staff, including peer tutors, necessary to operate the program and shall include the criteria used in selecting the staff.

(6)(a) [~~(5)~~] [~~(3)~~] Applications shall be approved by the chief state school officer prior to the encumbrance or expenditure of **any** [~~such~~] funds by any school district, including [~~but not limited to~~] the contracting for personnel for extended school services.

(b) Approval of programs as described in each district's application shall be based on operational guidelines approved and disseminated by the Department of Education.

(c) [~~Such~~] Guidelines shall be annually reviewed and modified as needed.

Section 6. Program Evaluation. (1) School districts providing extended school services shall submit an annual self-evaluation of [~~evaluate~~] the effectiveness of **extended** [~~such~~] services.

(2) The self-evaluation shall be developed according to instructions provided by the Department of Education and [~~Evaluation~~] shall be based upon the degree to which each student served in the program attains the expected competencies.

(3) Evaluation components shall [~~may~~] include:

(a) [~~but not be limited to such areas as~~] Percent of students achieving expected competencies;

(b) Percent of students attending a specified percent of time; and

(c) Percent of students who are promoted to the next level of the program as a result of the extended school services.

(4) School districts shall provide to the Department of Education the annual [a] report and other evaluation data deemed necessary by the Department of Education [~~of evaluation results~~].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

BUREAU FOR LEARNING SUPPORT SERVICES
Department of Education
Office of Learning Programs Development
(As Amended)

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

RELATES TO: KRS 156.111, 160.350
STATUTORY AUTHORITY: KRS 156.111
NECESSITY AND FUNCTION: KRS 156.111 mandates that the Kentucky Department of Education establish a superintendent training program and assessment center and that the State Board for Elementary and Secondary Education adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. This **administrative** 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)(a) 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.

(b) The report shall:

1. [~~(a)~~] Be sent at the conclusion of participation in the training, testing, and assessment process;

2. [~~(b)~~] Include a copy to the participating superintendent;

3. [~~(c)~~] Specify whether the participating superintendent successfully completed the training, testing, and assessment process.

(c) 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 **requirements** 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 **shall** [~~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, **an** [~~each~~] assessment center candidate shall **be required to** sign an **oath which pledges nondisclosure** [~~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.

(3) Failure to comply with the requirements of this administrative regulation by July 1, 1994, shall result in referral of the matter to the Education Professional Standards Board for consideration of revocation of the superintendent certificate.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.

KENTUCKY STATE UNIVERSITY
Board of Regents
(As Amended)

745 KAR 1:035. Procurement procedures.

RELATES TO: KRS 164A.575
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: **KRS 164A.560 vests the responsibility with the governing board of a public institution of public higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative regulations. It also permits the board to delegate these responsibilities to an institution official. The function of this administrative regulation shall be to implement the provisions of KRS 164A.560(1) and 164A.575 at Kentucky State University.** [~~KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.575 at Kentucky State University.~~]

Section 1. The Board of Regents of Kentucky State University, under the **authorization** [~~provisions~~] of KRS 164A.560, elects to **perform the financial management functions specified in KRS 164A.575,** [~~purchase interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with~~] Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12) [~~of KRS 164A.575~~]. [~~KRS 164A.575(1) through (12).~~]

Section 2. The president of **the** [~~Kentucky State~~] university **shall be** [~~, on behalf of the Board of Regents, is~~] authorized **by the Board of Regents of Kentucky State University to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12).** [~~to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, in accord with procedures based upon the principles of KRS Chapter 45A.~~]

Section 3. **The president of the university shall be authorized by the Board of Regents of Kentucky State University to negotiate with vendors as authorized by KRS 164A.575(2).** [~~The President of Kentucky State University, on behalf of the Board of Regents, is authorized to negotiate with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.~~]

BARBARA CURRY, Chairperson
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 14, 1992 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

806 KAR 2:110. Financial examinations of insurers.

RELATES TO: KRS 304.2-210, 304.2-230
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes standards for the Commissioner of Insurance and his examiners in conducting financial examinations of insurers.

Section 1. Definitions. [~~As used in this administrative regulation:~~]

(1) "Accredited state" means a state in which the insurance supervisory authority has qualified as meeting the minimum financial regulatory standards established from time to time by the National Association of Insurance Commissioners; and

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

Section 2. Foreign insurers authorized to do business in Kentucky shall be examined no less frequently than every five (5) years.

Section 3. **The commissioner shall not accept an examination report from the insurance supervisory official of another state on or after January 1, 1994, unless:** [~~In exercising his discretion to accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of another state, the commissioner shall not accept an examination report on or after January 1, 1994, unless:~~]

(1) The foreign or alien insurer is domiciled in a state which is an accredited state;

(2) The examination is performed under the supervision of an accredited state; or

(3) The examination is performed with the participation of an examiner employed by an accredited state who states under oath that the examination was consistent with the standards and procedures required by the accredited state.

Section 4. The commissioner's examiners shall observe the procedures set forth in the National Association of Insurance Commissioners Financial Condition Examiners Handbook (1976; as updated 1992), incorporated herein by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET) weekdays.

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: August 24, 1992
FILED WITH LRC: September 14, 1992 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

RELATES TO: KRS 304.2-210, 304.3-200, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 to 304.20-180, 342.325

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable **administrative** regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This **administrative** regulation defines unfair property and casualty insurance claims settlement practices.

Section 1. Definitions. As used in this **administrative** regulation:

(1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes the claimant's designated legal representative (e.g., administrator, executor, guardian, or similar person) and includes a member of the insured's immediate family designated by the claimant (the insurer may require written proof of designation);

(3) "Claim file" means any retrievable electronic file, paper file, or combination of both;

(4) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(5) "Days" means any day, Monday through Friday, except holidays;

(6) **[~~(5)~~]** "First party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

[~~(6) "Good faith" means an honest intention to abstain from taking any unconscientious advantage of another, together with absence of all information, notice, or benefit or belief of facts which render a transaction unconscientious;~~]

(7) "Insurer" means any person transacting property or casualty insurance, including reciprocal insurers and Lloyd's plan insurers. "Insurer" also means agents and third party administrators;

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the policy, certificate, or contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(10) "Policy," "certificate," or "contract," mean any contract of insurance or indemnity, but do not include contracts of workers' compensation insurance (except to the extent provided in Section 2 of this **administrative** regulation), fidelity, suretyship, or boiler and machinery insurance;

(11) "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels; **and**

(12) "Third party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer**[~~; and~~**

~~(13) Delay or denial of a claim is "without reasonable foundation" when there is no rational relationship between the reasons for the delay or denial of a claim and the insurance policy, contract, or certificate, applicable law, or applicable facts~~].

Section 2. Scope and Purpose of This **Administrative** Regulation. (1) This **administrative** regulation is to set forth minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts. This **administrative** regulation is not intended to cover claims involving fidelity, suretyship, or boiler and machinery insurance. This **administrative** regulation is not intended to cover claims involving workers' compensation to the extent those questions arise under KRS Chapter 342 since those questions shall be resolved by workers' compensation administrative law judges. However, this administrative regulation does apply to claims for unearned premium refunds under workers' compensation policies since workers' compensation administrative law judges do not have jurisdiction over a claim of this type. This administrative regulation is intended to define procedures and practices which constitute unfair claims settlement practices.

(2) Statement of enforcement policy.

(a) Market conduct examinations shall note violations of this administrative regulation when the examination identifies errors in excess of standards established pursuant to the Market Conduct Examiners Handbook (February, 1992) published by the National Association of Insurance Commissioners, incorporated by reference and available for inspection and copying from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

(b) As to complaints filed with the commissioner, violations of this administrative regulation shall be noted after the insurer or agent has been given an opportunity to pay the claim and any interest thereon.

(3) The sole purpose of this administrative regulation is to provide standards for the commissioner in investigations, examinations, and administrative adjudication and appeals therefrom. A violation of this administrative regulation can be found only by the commissioner. This administrative regulation shall not be construed to create or imply a private cause of action for violation of this administrative regulation. [~~The National Association of Insurance Commissioners, which created the model regulation on which this regulation is based, has stated that its model regulation is not appropriate for a state which allows a private cause of action for unfair claims settlement practices. Accordingly, the sole purpose of this regulation is to provide guidance to the commissioner and his designees in their investigations, examinations, and administrative adjudication and appeals therefrom.~~]

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's designees. To aid in an

examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) Documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) Each relevant document within the claim file shall be noted as to date received, date processed, or date mailed.

(4) For those insurers which do not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) **Insurers and agents shall not misrepresent or conceal from first party claimants any pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract when the benefits, coverages, or other provisions are pertinent to a claim.** [~~Insurers shall not fail to disclose fully to first party claimants all pertinent benefits, coverages, or other provisions of a policy, certificate, or contract under which a claim is presented.~~]

[~~(2) Agents shall not conceal from first party claimants benefits, coverages, or other provisions of any policy, certificate, or contract when the benefits, coverages, or other provisions are pertinent to a claim.~~]

(2) [~~(3)~~] A claim shall not be denied on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(3) [~~(4)~~] Insurers shall not deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract or the claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of claimant's duty to cooperate with the insurer.

(4) [~~(5)~~] Insurers shall not indicate to a first party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(5) [~~(6)~~] Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from total liability.

Section 5. Failure to Acknowledge Pertinent Communications. (1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) [~~calendar~~] days acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within **fifteen (15)** [~~twenty one (21) calendar~~] days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) An appropriate reply shall be made within fifteen (15) [~~calendar~~] days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) [~~calendar~~] days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers. (1)(a) The insurer shall affirm or deny any liability on claims within a reasonable time and shall offer any payment due within thirty (30) calendar days of receipt of due proof of loss. [~~If the insurer fails to pay the claim within thirty (30) days of receipt of due proof of loss, and the delay or denial is due to lack of a good faith attempt to settle the claim, the claim bears interest at the rate of twelve (12) percent per annum from the expiration of thirty (30) days from the receipt of due proof of loss. If the delay or denial is without reasonable foundation, the insured shall be reimbursed for reasonable attorney's fees incurred in collecting the claim.~~] In claims where multiple coverages are involved, payments which are not in dispute shall be tendered within thirty (30) **calendar** days of receipt of due proof of loss.

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(2)(a) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for investigation. [~~The letter shall also describe to the insured the availability of interest and attorney's fees specified in subsection (1)(a) of this section.~~]

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the first party claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(3) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(4) Insurers shall not continue negotiations for settlement of a claim directly with a **first party** claimant who is not legally represented if the **first party** claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the **first party** claimant written notice of the limitation. The notice shall be given to **the** first party claimant[~~s~~] at least thirty (30) calendar days [~~and to third party claimants at least sixty (60) calendar days~~] before the date on which the time limit expires.

(5) Insurers shall not make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Subject to subsection (1)(a) of this section relating to first party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. In claims where multiple coverages are involved, payments which are not in dispute and where the payee is known shall be tendered within thirty (30) calendar days if the payment would

terminate the insurer's known liability under that individual coverage.

(7) Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, or contract and applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) When the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet) and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file.

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The cost may be determined by:

1. The cost of a comparable motor vehicle in the local market area when a comparable motor vehicle is available in the local market area; **[~~or~~]**

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers (i.e., dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business) located within the local market area; or

3. Any source for determining statistically valid fair market values that meet all of the following criteria:

a. The source shall give primary consideration to the values of vehicles in the local market area;

b. The source's data base shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles; and

c. The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged.

(c) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the claim draft that the insured cannot purchase a comparable motor vehicle for market value as defined in this paragraph, the insurer shall reopen its claim file and comply with the following procedures:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. This vehicle must be available through licensed motor vehicle dealers;

2. The insurer shall either pay the insured the difference betwen the market value before applicable deductions and the cost of the comparable motor vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this motor vehicle for the insured; or

3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waiver any other rights either party has under the insurance contract or law.

(d) **[~~(c)~~]** When a first party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) and (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernable, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first party claimant.

(2) The measure of damages in a third party motor vehicle loss is the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value.

(3) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims under the insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle, to obtain a repair estimate, or to have the motor vehicle repaired at a specific repair shop.

(5) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

(6) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a worker-like manner. If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured, or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a worker-like manner. The insurer shall maintain documentation of all of these communications.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(8)(a) Betterment deductions are allowable only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(9) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the **[~~original~~]** part **to be replaced** in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

Section 8. Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage. (1) When the policy, contract, or certificate provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) When a loss requires replacement of items and the replaced items do not **reasonably** match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value.

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection is not required. In these cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 31, 1992
FILED WITH LRC: August 5, 1992 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. [~~This amendment is necessary to add a new product approved by the Plumbing Code Committee on May 26, 1992.~~]

Section 1. Definitions. (1) "APML" **means** [~~shall mean~~] the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" **means** [~~shall mean~~] all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" **means** [~~shall mean~~] the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a **specification** [~~standard number~~] listed in the code shall be considered approved if it meets the latest edition of **the specification** [~~that numbered standard~~].

(2) [~~The use of~~] Any part or material **shall not be used** in [~~any~~] drainage or plumbing system, other than those currently authorized by the code, [~~is prohibited~~] unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. [~~It shall be the responsibility of~~] The Director, Division of Plumbing, **shall** [~~to~~] maintain an up-to-date APML and [~~to~~] make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household

usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

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

RELATES TO: KRS Chapters 198B, 318
STATUTORY AUTHORITY: KRS [~~13A.120,~~] 198B.040(10), 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies the specification numbers for the [~~relates to~~] quality and weight[~~s~~] of material[~~s~~] that shall [~~will~~] be used in the installation of plumbing systems and [~~is necessary to~~] establishes minimum **specifications** [~~standards~~] for the intended use. This amendment is necessary to correct references to various standards to be used in the installation of plumbing systems; delete obsolete language relative to the regulation of subsoil drainage systems which are no longer under the jurisdiction of the department, and removes all references to allowing lead in water distribution piping which has been prohibited for years. [~~this quality and weight and to conform to accepted practices. This amendment is necessary to identify new standards used in the manufacturing of plastic pipe (Section 10(2) of this regulation). This amendment was approved by the State Plumbing Code Committee on November 6, 1991.~~]

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASSE" means American Society of Sanitary Engineers and copies of **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means American Society for Testing and Materials and copies of **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) "Drainage System" means all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. It does not include the mains of public sewer systems or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means an abbreviated term for drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(8) "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the **administrative** regulations of the public health authority having jurisdiction.

(9) "PVC" means polyvinyl chloride.

(10) "Stack" means any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(11) "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting

the flow of sewage or wastewater [~~through it~~].

(12) "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(13) "Waste pipe" means a pipe which conveys only waste.

Section 2. Materials, Quality of. The [~~All~~] materials used in a [~~any~~] drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with the weight or quality and with the maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe **and** extra heavy SDR 35 sewer piping **[**~~polyethylene sewer piping, polyethylene and corrugated polyethylene subsoil drainage tubing~~]** shall be produced and labeled and used only as follows:

(1) Vitrified clay pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] C-200.

(2) Concrete pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] C-14.

(3) Truss pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-2680-74. Solid wall truss pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-2751-74.)

(4) Extra heavy SDR 35 sewer piping, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-3033-74 and D-3034-74.

[~~(5) Polyethylene sewer piping shall conform to ASTM D-3350 and shall be used only between a septic tank and a distribution box or boxes.~~

~~(6) Polyethylene and corrugated polyethylene subsoil drainage tubing shall conform to ASTM Standard Specifications F-405-74 and shall bear the National Sanitation Foundation (NSF) seal of approval. No pipe or fittings shall be used unless the manufacturer of the material submits to the department a sample of the pipe and fittings that will be used, along with an analysis of the material from a private testing laboratory approved by the department. The report shall be submitted to the department on an annual basis as of July 1, of each year. Polyvinyl Chloride subsoil drainage tubing shall conform to ASTM D-2729. The tubing shall have two (2) rows of three fourths (3/4) inch holes within an arch of 120 degrees of circumference of the piping and shall be on four (4) inch centers. The tubing shall be visibly marked with the name of the manufacturer and the commercial standard number at ten (10) feet intervals.~~]

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as [~~conform to~~] ASTM A74-82.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as [~~conform to~~] ASTM A74-82.

(3) Coating. Cast-iron pipe and fittings for underground use shall be coated with asphaltum, coal tar pitch or using a coating produced and labeled as [~~conforming to~~] ASTM A-174.

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be produced and labeled with [~~conform to~~] the latest ASTM "**[**~~standard~~**]** specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. [~~All~~] Steel pipe shall be produced and labeled with [~~conform to~~] the latest ASTM "**[**~~standard~~**]** specifications for welded and seamless steel pipe."

Section 8. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall be produced and labeled with [~~conform to~~] the latest **[**~~standard~~**]** specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. Aluminum drain, waste and vent pipe with end cap adapters shall be produced and labeled as ASSE [~~conform to the requirements of American Society of Sanitary Engineering (ASSE)~~] **Specification [**~~Standard~~**]** No. 1045.

Section 10. Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe and Polypropylene Pipe. (1) Borosilicate pipe shall be produced and labeled with [~~conform to~~] the latest ASTM **specifications [**~~standards~~**]**.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D 1784-75 [~~compounds as defined and described in tentative specifications for rigid polyvinyl chloride (PVC) (ASTM Designation: D 1784-75)~~], or cellular core PVC produced and labeled [~~conforming to~~] ASTM F-891, or Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D 1788-73 [~~compound as defined and described in standard specification for acrylonitrile butadiene styrene (ABS) (ASTM Designation: D 1788-73)~~] or cellular core ABS produced and labeled as [~~conforming to~~] ASTM F-628. Pipe and fittings shall be produced and labeled in accordance with the provisions of [~~Commercial Standard~~] ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-90 [~~76~~] for ABS, and both shall bear the National Sanitation Foundation seal of approval. Copies of National Sanitation Foundation **specifications [**~~standards~~**]** for the manufacturer of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size. The use of plastic pipe and fittings (PVC or ABS) as outlined here shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, the vertical distance from the base of the stack to its terminus through the roof of the building.

(3) Stainless steel tubing. Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as [~~conforming to~~] ASTM A268-68. Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H produced and labeled as [~~conforming to~~] ASTM A-268-68.

(4) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as [~~conform to~~] ASTM D-1204-62T.

(5) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as [~~conform to~~] ASTM D-2146-65T.

Section 11. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipes shall be produced and labeled as [~~in accordance with the standards of the Lead Industries Association and~~] Federal Specifications WW-P-325, [~~which are identical in substance,~~] and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"	Wall Thickness Inches	Weight Per Foot Pounds	Ounces
1 1/2	D XL	0.138	3	8
2	D XL	0.142	4	12
3	D XL	0.125	6	0
4	D XL	0.125	8	0

(2) All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness. [~~Weights for lead water service or supply pipes shall be~~

~~according to the maximum working pressure in pounds per square inch as given in federal specifications WW-P-325.~~]

Section 12. On roofing systems requiring integral flashings, a flashing material which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

Section 13. Sheet Lead. Sheet lead for shower pans shall not weigh less than four (4) lbs. per sq. ft. and shall not weigh less than three (3) lbs. per sq. ft. for vent pipe flashings.

Section 14. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 15. Threaded Fittings. (1) Plain screwed fittings shall be either cast-iron, malleable iron, or brass of standard weight and dimensions.

(2) Drainage fittings shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) [~~All~~] Cast-iron fittings used in a water supply distribution shall be galvanized.

(4) [~~All~~] Malleable iron fittings shall be galvanized.

Section 16. Caulking Ferrules. Caulking ferrules shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 17. Soldering Nipples. Soldering nipples shall be recessed red cast brass, iron pipe size. When cast, they shall be full bore and of minimum weight.

Section 18. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. Floor flanges shall either be hard lead, brass, cast iron, galvanized malleable iron, ABS or PVC. Hard lead and brass flanges shall not be less than one-eighth (1/8) inch thick. Cast iron and galvanized malleable iron shall not be less than one-fourth (1/4) inch thick and shall have a two (2) inch caulking depth.

Section 19. The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead) in the installation or repair of a [~~any~~] public or private water system providing potable water for human consumption shall not be used.

Section 20. New Materials. Materials other than those specified in this **administrative** regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified in the State Plumbing Code. It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace. Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall [~~are to~~] be used in the construction of plumbing systems and identifies the manufacturer's [~~standard~~] specification number of the material accepted in those installations. This amendment is necessary to correct references to various standards to comply with KRS Chapter 13A drafting rules. [~~The amendment to this regulation includes the deletion of archaic material as well as amending language to allow the use of alternative materials and clarifying specific standards to be used.~~]

Section 1. Materials. [~~All~~] Receptacles used as water closets, urinals, or [~~otherwise~~] for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. [~~All~~] Plumbing fixtures shall be installed to allow [~~free and open in a manner to afford~~] access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be [~~made~~] of one (1) piece construction and [~~of such form as to~~] hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim [~~so constructed as~~] to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be constructed [~~made~~] with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building shall [~~must~~] have a nonabsorbent floor. A [~~Each~~] frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain shall be [~~is~~] considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower [~~drain~~] pans shall be

constructed **without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor before the outside grade level. Shower drain pans shall be constructed as follows:**

(a) Of sheet lead weighing not less than four (4) pounds per square foot; **or**

(b) Of nonplasticized chlorinated polyethylene produced and labeled as [~~conforming to~~] ASTM D-412-66, D-1204-54 [~~D-12-4-54~~] and D-568-61 **and they** shall be not less than 0.040 inches **thick**; **or**

(c) Of nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as [~~conforming to~~] ASTM D-1004, D-2204, D-412 and D-1790 **and they** shall be not less than 0.040 inches thick; or

(d) Of other approved material. **[**~~Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor below the outside grade level.~~**]** Copies of ASTM **specifications [**~~standards~~**]** identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1 [~~conform to Commercial Standards CS 221-59~~]. Acrylic-faced bathtubs shall be produced and labeled as [~~conform to~~] ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2 [~~conform to Commercial Standards CS 222-59~~].

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, shall be produced and labeled as [~~conform to~~] ANSI Z 124-1, lavatories shall be produced and labeled as [~~to~~] ANSI Z 124-3 and shower stalls shall be produced and labeled as [~~to~~] ANSI Z 124-2. Copies of ANSI **specifications [**~~standards~~**]** identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. [~~All~~] Fixtures, other than water closets and pedestal urinals, shall be provided with a strainer. The [~~total~~] outlet area of the strainer shall not be less than [~~that of~~] the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning [~~be so arranged that it may be readily and effectively cleaned~~].

[~~Section 9. Ventilation of Rooms Containing Fixtures. Refer to BOCA Basic Mechanical Code M-1602.9 and BOCA One and Two Family Dwelling Codes, R-204.3.~~]

Section 9. [~~10.~~] Fixture Additions. [~~Any fixture or~~] Fixtures added to a plumbing system shall be installed to comply with **all applicable [**~~the other~~**]** sections of the State Plumbing Code [~~this code~~].

Section 10. [~~11.~~] Defective Fixtures. [~~Any~~] Newly installed fixtures found defective or old fixtures found to be in **an unusable [**~~any unsanitary~~**]** condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 11. [~~12.~~] Water Heaters. (1) A water heater designed for use as [~~is~~] an appliance for supplying potable hot water for domestic or commercial purposes[~~. It~~] may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney. A water heater [~~, but in no case~~] shall not [~~this~~] be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window. A [~~No~~] fuel fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping. If a water heater is placed in a closed room or closet, the door shall [~~must~~] be a louver door or shall be properly ventilated [~~provided with proper ventilation~~] to provide combustion air and circulation (see 815 KAR 20:120).

(2) Direct venting system location. Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the National Fire Prevention Association Pamphlet #54 adopted by reference in the Kentucky Fire Prevention Code filed in 815 KAR 10:040 [~~have as a minimum the National Fuel Gas Association Standards as follows: (NFPA Pamphlet #54)~~]. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and [~~such~~] an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance. The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade" (see 815 KAR 20:120, Section 11).

Section 12. [~~13.~~] Conservation of Water. (1) Conservation of hot water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved flow control devices to limit total flow to a maximum of three (3) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with outlet devices which limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatories (other than those listed in subparagraph 1 of this paragraph) and sink faucets shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of four (4.0) gpm.

(2) Conservation of cold water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved control devices to limit total flow to a maximum of three (3.0) gpm per shower head.

(b) Lavatories and sink faucets. Lavatories and sink faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of four (4.0) gpm.

(c) Water closets.

1. Tank type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

2. Flushometer type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

(d) Urinals.

1. Tank type urinals shall not exceed three (3) gallons (eleven and four-tenths (11.4) liters) per flush.

2. Flushometer type urinals shall not exceed one and one-half (1 1/2) gallons (five and seven-tenths (5.7) liters) per flush.

(3) Lavatory faucets located in restrooms intended for public use shall be of the metering or self-closing type except those intended [~~that are separate~~] for the physically impaired.

(4) The provisions of this section shall apply to [~~all~~] new construction, [~~as well as~~] renovations and replacement in existing structures. Upon satisfactory compliance with [~~In satisfaction of~~] the requirements of this section, the Division of Plumbing shall permit the installation of tank type water closets equipped with devices [~~which are~~] found by the inspector to meet applicable **specifications [**~~standards~~**]** in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of

Plumbing may also allow the use of standard flush water closets and urinals which do not meet the specific **specifications** [~~standards~~] if [~~when~~], in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if [~~where~~] the owner requests the use of antique fixtures which may not be equipped for reduced flow.

[~~(5) The equipment required by this section will be mandatory April 1, 1988.~~]

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

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

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the proper installation of steel and wrought iron pipe and fittings and identifies the manufacturer's [~~standard~~] specification number of the material accepted in those installations. This amendment is necessary to correct references to standards to comply with KRS Chapter 13A drafting rules. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Materials. [~~All~~] Steel pipe shall be produced and labeled with [~~conform to~~] the current [~~latest~~] ASTM [~~standard~~] specification[~~s~~] number for welded wrought iron pipe or [~~ASTM standard specifications for~~] welded and seamless steel pipe. Schedule 40 shall be the minimum weight. For water distribution or soil, waste and vent, [~~only~~] galvanized pipe shall be used. Copies of ASTM **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Cutting and Reaming. (1) Pipe shall be cut to length with a square cut using pipe cutters, hacksaw or abrasive saw.

(2) If the [~~All~~] cut-to-length pipe [~~which~~] is to be threaded or prepared for a mechanical connection, it shall be reamed to the full inner diameter of the pipe.

Section 3. Jointing Techniques. (1) Screw joints. [~~All~~] Screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads. Tighten hand-tight to check for alignment and then tighten enough to insure a tight leak-proof joint. Do not overtighten.

(2) Mechanical joints. Mechanical joints for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets are [~~conform to~~] ASTM D-735-61, Grade N-R-615 BZ [~~and are limited to 2 in size and above~~]. [~~Lubricate~~] The pipe ends shall be lubricated with an [~~with~~] approved lubricant and [~~slip~~] the gasket shall be slipped [~~completely~~] over one (1) pipe end. The [~~Bring~~] pipe ends shall be connected [~~together~~] and [~~slide~~] the gasket shall be inserted [~~back~~] into central spanning position. The [~~Put~~] housing clamps shall be placed over the gasket and the [~~, insert~~] bolts and nuts tightened with a socket wrench[~~, draw nuts down equally and tightly~~].

Section 4. Hangers and Supports. (1) Hangers, anchors and supports shall be [~~of material~~] of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at [~~sufficiently close~~] intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(2) Vertical piping.

(a) Screwed piping shall be supported at every other story height and [~~with~~] supports shall be of ferrous metal.

(b) Mechanical joint piping shall be supported at every story height and [~~with~~] supports shall be of ferrous metal.

(3) Horizontal piping. Horizontal piping shall be supported at [~~sufficiently close~~] intervals which [~~to~~] keep the piping in alignment and prevent sagging. Screwed and mechanical joint pipe one and one-half (1 1/2) inches and over shall be supported at [~~each~~] twelve (12) foot intervals; one and one-quarter (1 1/4) inch and smaller shall be supported at [~~each~~] eight (8) foot intervals. Supports shall be of ferrous metal.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

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

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation shall govern the installation of polybutylene (PB) tubing in potable hot and cold water distribution systems within buildings and identifies the manufacturer's [~~standard~~] specification number of the material accepted in those installations. Installation, materials and inspections shall comply with the current edition of the Kentucky State Plumbing Code and with this administrative regulation. This amendment is necessary to make technical corrects to standards for installation of polybutylene tubing for hot and cold water systems and comply with KRS Chapter 13A drafting rules. [~~standard. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Definitions. (1) "ASTM" means American Society of Testing Materials and copies of the **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(2) "KSPCC" means Kentucky State Plumbing Code Committee.

(3) "NSF" means the National Sanitation Foundation and copies of the **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, Michigan 48106.

(4) "PB" means polybutylene.

(5) "SDR" means standard dimension ratio.

(6) "Approved" means approval received from the Kentucky Department of Housing, [by the Commonwealth of Kentucky,] Division of Plumbing.

Section 2. (1) Material. Tubing shall be polybutylene (PB) and shall be produced and labeled as [:

(2) Tubing shall conform to] ASTM D-3309-85b.

(2) [(3)] Fittings shall be metal or plastic compression or insert type.

(a) Compression fittings shall utilize brass nuts and shall be approved for use with PB tubing.

(b) Insert fittings. Refer to 815 KAR 20:120, Water Supply Pipes and Materials.

NOTE 1. Manufacturers of fittings shall recommend assembly procedures.

NOTE 2. Manufacturers shall provide test data from an independent testing laboratory acceptable to the KSPCC, that their PB system or their PB tubing, together with recommended fittings, shall have [has] a short term working pressure and temperature rating (STWP) of [or] 150 psi (1033 kPa) at 210 degrees Fahrenheit (410 degrees Centigrade) for forty-eight (48) hours or more.

Section 3. Markings. (1) Tubing. Tubing shall be legibly marked or labeled at intervals of not more than five (5) feet (1.5m) with [at least] the following:

(a) Manufacturer's name or trademark.

(b) ASTM D3309.

(c) Tube size marked, "tubing" or "copper tubing size (CTS)".

(d) PB 2110.

(e) SDR 11.

(f) Pressure rating, 100 psi, at 180 degrees Fahrenheit (690 Mpa at eighty-two (82) degrees Centigrade).

(g) NSF seal or marking or other KSPCC acceptable agency.

(h) Manufacturer's date and material code.

(2) Fittings. Fittings shall be marked with [at least] the following:

(a) Manufacturer's name or trademark or other acceptable markings.

(b) Plastic fittings shall be labeled with the NSF seal or marking of other KSPCC acceptable agency.

(3) Position of markings. If [When] practical, markings shall be visible for inspection.

Section 4. Protection of Tubing. (1) Abrasion. Tubing passing through drilled metal studs, joists, or hollow masonry walls shall be protected from abrasion or sharp edges by elastomeric or plastic sleeves, grommets or other approved means.

EXCEPTION: Straight runs may have protection only at beginning and end at maximum three (3) feet (0.9m) intervals.

[(2) Puncture. Steel plate protection shall be installed if [when] required by this regulation or other regulations of the department.]

(2) [(3)] Exposed tubing.

(a) Attic opening. Tubing closer than six (6) feet (1.83m) to an attic opening shall be protected.

(b) General. Exposed tubing shall be protected from mechanical damage.

(3) [(4)] Freezing. In areas where PB must be drained to protect the system from freezing, horizontal tubing shall be graded to drain.

(4) [(5)] Storage. Tubing shall be stored [in a way] to protect the system from mechanical damage (slitting, puncturing, etc.). Tubing shall be stored undercover to keep it clean and avoid long term exposure to sunlight. Exposure to sunlight during normal construction periods is not harmful.

(5) [(6)] Thermal expansion. General. The linear expansion rate for PB is approximately ten (10) inches (600 mm) per 100 feet (10,000 mm) of tube per 100 degrees Fahrenheit (fifty (50) degrees Centigrade) change in temperature. If [When] installing runs of tubing, one-eighth (1/8) inch (three (3) mm) longitudinal clearance per foot (300 mm) of run shall be provided to accommodate thermal expansion. A vertical branch being connected to a horizontal main shall be made by loop, or a twelve (12) inch (300 mm) minimum horizontal offset to allow for expansion and contraction [construction] in both sections of the tubing. Examples of expansion methods are shown in Figure 1.

NOTE: Radius of bends shall comply with Section 10(1) of this regulation.

NOTE: Expansion rate is independent of size of tube.

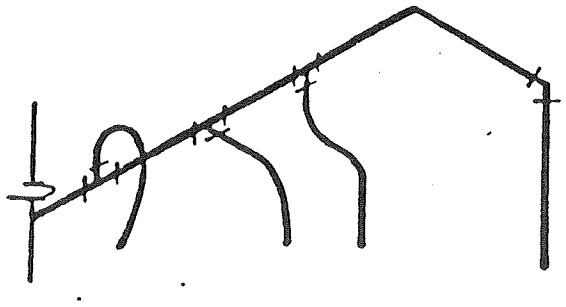


Figure 1

(6) [(7)] Clearance. Adequate clearance shall be provided between tubing and structure (such as bored holes and sleeves) to allow free longitudinal movement.

Section 5. Hangers and Supports. (1) Vertical tubing. Vertical tubing shall be supported at each floor. Tubing shall have a midstory guide.

(2) Horizontal tubing. Horizontal tubing shall be supported at maximum thirty-two (32) inch (810 mm) intervals. If continuously supported, hangers or supports may be placed at six (6) feet (1800 mm) intervals.

(3) Hangers and anchors. Tubing shall not be anchored rigidly to a support; but shall be secured with smooth hangers or straps allowing [that provide] for a degree of movement and preventing [that prevents] damage to the tubing. [Do not use] Hangers or straps with sharp or abrasive edges shall not be used. [Do not use] Hangers that pinch the tubing shall not be used. Metal hangers or straps shall be insulated to prevent abrasion.

Section 6. Joints and Connections. (1) Procedure. Tubing shall be cut with a tubing cutter, equipped with a thin cutting wheel designed specifically for plastics. Tubing shall be cut square, i.e., perpendicular to the length. If other cutting methods are used, care shall be taken to remove any excess material, flashing or burrs.

(2) Tools.

(a) Compression fittings. Follow manufacturers recommendations.

(b) Insert fittings. [only] Approved crimping tools shall be used with PB insert fitting systems. Tools shall be calibrated three (3) times daily and used in conjunction with approved insert fittings. Crimp rings shall be of wrought copper only. For specific crimping procedures, follow manufacturer's recommendations.

(c) Socket-fused joints.

1. The [Cut] pipe or tubing end shall be cut square.

2. [Chamfer] The outside corner of the pipe end shall be chamfered for pipe one and one-quarter inch (1 1/4") iron pipe size (IPS) and larger with proper chamfering tool.

3. The [Clean] pipe or tubing end shall be clean and [. (pipe shall be] free of dirt or grease.[)]

4. A [Place] depth gauge shall be placed on the pipe or tubing end to prevent the[, thereby preventing] pipe from bottoming out on the fitting.

5. A [Clamp] cold ring shall be clamped around the pipe with one

(1) side contacting the depth gauge. (Cold ring rounds the pipe end, and limits the depth that the heater face and socket fitting slide over pipe end.)

6. To insure pipe or tubing roundness with one-half inch (1/2") and three-fourths inch (3/4") pipe, an [use] insert stiffener shall be used [to insure pipe or tubing roundness].

7. The [Clean] fitting shall be clean and the[.-(] socket shall be free of dirt or grease.[)]

8. The heating tool shall be cleaned after each fusion.

9. The [Place] pipe or tubing end and fitting shall be placed adjacent to the heater elements.

10. The temperature of the heating tool shall be no less than 500 degrees Fahrenheit nor shall it exceed 526 degrees Fahrenheit.

11. The [Push] pipe or tubing end, heater and fitting shall be pushed together with an even pressure.

12. [Use] The following chart or manufacturer's recommendations shall be used for heating and cooling times.

Size	Heating Time	Cooling Time
1/2"	5 - 7 Seconds	20 Sec. Minimum
3/4"	7 - 9 Seconds	20 Sec. Minimum
1"	8 - 10 Seconds	20 Sec. Minimum
1 1/4"	10 - 12 Seconds	20 Sec. Minimum
1 1/2"	10 - 12 Seconds	20 Sec. Minimum
2"	12 - 15 Seconds	30 Sec. Minimum

13. [Make certain that] Joint shall be [is] intact and formed properly.

Section 7. Transition Joints. (1) Fittings. Transitions for PB tubing to metal piping valves shall be made only with approved transition fittings intended for [to] this purpose.

(2) Threaded joints. Female threaded plastic fittings shall not be installed unless specifically approved for this purpose. Only approved thread tape or thread lubricant intended for use with plastic fittings shall be used. Conventional pipe thread compounds, putty, mineral oil, linseed oil base products, and unknown mixtures shall not be used. Threaded plastic fittings shall not be over-tightened. [DO NOT OVERTIGHTEN].

Section 8. Materials Location. Fittings shall NOT be installed in or under a concrete floor slab resting on the ground within a building or structure **which** [or parts thereof][.] [The term] ["Building or structure or part thereof"] shall include [structures such as] porches and steps, roofed porte-cocheres, roofed patios, carports, covered driveways, and similar structures or appurtenances.

Section 9. Pressure Relief Drains. Drain lines. Tubing shall not be used as a pressure relief valve drain pipe.

Section 10. Installation. (1) Bends. Tubing shall be installed using bends with a minimum radius of twelve (12) times the nominal tubing diameter.

(2) Damage. Kinked or buckled tubing shall be removed.

(3) Finished nipples. It shall be [is] permissible to stub through a finished wall, floor or ceiling surface with nipples connected to drip ear elbows or other fittings designed to be fastened to the structure to prevent rotation. Finish nipples shall be of conventional metallic materials or shall be nonmetallic code approved nipples.

(4) Hose bibbs. Hose bibbs shall not be directly connected to PB tubing. The metal piping directly connected to any hose bibb shall be anchored so that the loads on the hose bibb shall not strain the PB tubing.

(5) Recess light fixtures. PB tubing shall not be installed within twelve (12) inches (.30m) of a recessed light fixture.

(6) PB tubing installed in fire resistive construction. If [Where] tubing [is installed and] penetrates required fire resistive construction, the fire resistive integrity of the construction shall be maintained. Methods for maintaining the integrity of the fire resistive construction shall be as required by the Kentucky Building Code; or if [where] not established by the Kentucky Building Code, by qualified testing methods approved by the Division of Plumbing. Approval shall be obtained prior to installing any tubing.

(7) Heated joints. Brazed, soldered or welded joints within eighteen (18) inches (500 mm) of PB tubing shall be made before connecting to PB tubing. [DO NOT apply] Flame shall not be applied to tubing.

(8) Vents. Tubing shall not be installed within six (6) inches (fifteen and one-tenth (15.1) mm) of a gas appliance single wall vent connector or within a confined space (such as stud cavity) containing any appliance vent.

(9) Working pressure and temperature. Working pressure shall not exceed eighty (80) psi (552 kPa) and working temperature shall not exceed 180 degrees Fahrenheit (eighty-two (82) degrees Centigrade).

(10) Exposure to sunlight. PB tubing shall not be installed so as to be subjected to direct sunlight after installation, and shall not be installed on the surface of the building.

(11) Water heaters. Tubing shall not be installed downstream from any instantaneous type (coil or immersion) water heater or closer than six (6) inches (fifteen (15) mm) developed length upstream. Tubing [It] shall not be installed in the vertical runs of a water heater and downstream six (6) inches horizontally.

(12) Identification. A permanent sign with the legible words "This building has nonmetallic interior water piping" shall be fastened on or inside the main electric service panel.

(13) Water hammer arresters. A PB hot water system may [will] withstand repeated pressure surges, [well] in excess of its rated pressure, but water hammer arresters may be advisable if [when] solenoid valves or other quick closing devices are used in the system. In designing for these devices, the [pipe or fitting] manufacturer's recommended surge pressure limits shall be utilized for the pipe or fitting.

(14) [Only] Approved metal fittings shall be used in hot water circulating lines.

(15) The system shall be tested in accordance with the Kentucky Plumbing Code. A PB distribution system shall be pressure tested immediately after installation.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:076. Installation recommendations for polybutylene (PB) cold water building supply, yard piping and tubing.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS [13A.120,] 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation shall govern the installation of polybutylene (PB) pipe and tubing in cold water building supply and yard systems, and identifies the manufacturer's [standard] specification number of the material accepted in those installations. Installation, materials and inspections shall comply with the current edition of the Kentucky State Plumbing

Code and with this administrative regulation. This amendment is necessary to comply with KRS Chapter 13A drafting rules. [standard. This amendment deleting Section 7 of this regulation is necessary to allow the use of polybutylene pipe under concrete and to remove language which conflicts with 815 KAR 20:075.]

Section 1. Definitions. (1) "ASTM" [. For the purpose of this regulation,] means the American Society of Testing Materials and copies of the **specifications** [standards] identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(2) "KSPCC" [. For the purpose of this regulation,] means "Kentucky State Plumbing Code Committee."

(3) "NSF" [. For the purpose of this regulation,] means "National Sanitation Foundation."

(4) "PB" [. For the purpose of this regulation,] means "polybutylene."

(5) "SDR" [. For the purpose of this regulation,] means "Standard Dimension Ratio."

(6) "Approved" [. For the purpose of this regulation,] means approval received from the Kentucky Department of Housing, Buildings and Construction, Division of Plumbing.

Section 2. (1) Material. Tubing shall be [is] polybutylene (PB) and shall be produced and labeled as [.

(2)(a) Tubing shall conform to] ASTM D-2666.

(2) [(b)] Pipe shall be produced and labeled as [conform to] ASTM D-2662.

[NOTE: Pipe is usually black or blue.]

(3) Fittings shall be metal or plastic compression, flare or insert type. (Refer to 815 KAR 20:120, [Section 9,] Water supply pipes and materials.)

NOTE 1. Manufacturers of fittings shall recommend assembly procedures.

NOTE 2. Manufacturers shall provide test data from an independent testing laboratory, acceptable to the KSPCC, that their PB system or their PB tubing, together with recommended fittings, has a short term working pressure and temperature rating (STWP) or 160 psi at 210°F for forty-eight (48) hours or more.

Section 3. Markings. (1) Tubing. Tubing shall be legibly marked at intervals of not more than five (5) feet with [at least] the following:

(a) Manufacturers name or trademark.

(b) ASTM D-2662 (pipe) or ASTM D-2666 (tubing).

(c) Size.

(d) PB 2110.

(e) Pressure rating, 160 psi.

(f) NSF seal or marking or other KSPCC acceptable agency.

(g) Manufacturers date and material code.

(2) Fittings. Fittings shall be marked with [at least] the following:

(a) Manufacturers name or trademark or other acceptable markings.

(b) Plastic fittings shall be labeled with the NSF seal or marking of other KSPCC acceptable agency.

(3) Bands shall be marked with [at least] the following:

(a) Manufacturers name or trademark.

(b) Model.

(c) Stainless steel series (300).

(4) Position of Markings. Identifying markings shall be visible for inspection without moving materials [unless otherwise acceptable to the administrative authority].

Section 4. Protection of Piping. (1) Exposed piping. Vertical piping may extend a maximum of twenty-four (24) inches above grade if [when] located on the exterior of the building or structure and protected from mechanical damage [to the satisfaction of the Kentucky Division of Plumbing]. If [Where] exposed to sunlight, the pipe shall be wrapped with at least 0.040 inches of tape.

(2) Protection from damage. Piping coils, as supplied by the manufacturer, shall be adequately protected against damage in shipment. A prominent label shall contain at least the information required in Section 3(1) of this **administrative** regulation.

(3) Storage. Piping shall be stored [in a way] to protect it from mechanical damage (slitting, puncturing, etc.). Tubing shall be stored under cover to keep it clean and to avoid long-term exposure to direct sunlight. Exposure to sunlight during normal construction periods is not harmful.

(4) Thermal expansion.

(a) Snaking. Piping shall be "snaked" in the trench bottom with enough slack, at least six (6) inches per 100 feet, to compensate for thermal expansion and contraction before stabilizing piping.

(b) Stabilizing. [Stabilize] Piping shall be stabilized by bringing the piping [it] approximately to operating temperature before testing and backfilling by one of the following methods:

1. Shade backfill. Joints shall be [Leave all joints] exposed for examination [so that they may be examined] during pressure test.

2. Piping shall be filled [Fill] with water at operating temperature.

3. Piping shall be allowed [Allow] to stand overnight.

Section 5. Trenching, Cover and Backfill. (1) Trenching and cover. Trench bottoms shall be uniformly graded and shall be of either undisturbed soil or shall consist of a layer or layers of compacted backfill to allow [so that] minimum settlement to [will] take place.

(2) Backfill. Selected backfill shall be used. Backfill shall be tamped [Tamp the backfill] around the pipe [so as] to provide firm continuous support and proper compaction. Backfill shall be at least twelve (12) inches over pipes, except that joints shall be left exposed. After inspection and pressure test, backfill shall be completed [complete backfill].

Section 6. Joints. Joints shall be made as follows:

(1) Barbed insert fittings. Procedure (pipe only).

Step 1. Pipe shall be cut [pipe] square.

Step 2. Burrs shall be removed. [Remove all burrs.]

Step 3. [Place] Two (2) strap-type stainless steel clamps shall be placed over the pipe (see Section 3(3) of this **administrative** regulation).

Step 4. [Check that] Fittings shall be [are] properly sized for pipe.

Step 5. [Force] The end of the pipe shall be placed over the barbed insert fitting, making contact with the fitting shoulder (the end of the pipe may be softened by placing in hot water.)

Step 6. [Position] The clamps shall be positioned 180 degrees apart and tightened evenly to seal joint.

(2) Flared joints, procedure (pipe and tubing).

Step 1. [Cut] Pipe or tubing shall be cut square.

Step 2. Burrs shall be removed. [Remove all burrs.]

Step 3. The [Place] nut shall be placed over end of piping or tubing.

Step 4. [Lubricate] The point of the flaring tool and the tubing to be flared shall be lubricated using a [. Use] nontoxic liquid soap or other lubricant recommended by the manufacturer.

Step 5. [Flare] Piping shall be flared with a listed tool according to the tool manufacturers recommendations.

Step 6. [Assembly] The joint shall be assembled.

Step 7. [Tighten] Flare nuts shall be tightened according to manufacturers recommendation. Flare nuts shall not be overtightened. [DO NOT OVERTIGHTEN.]

(3) Mechanical compression joints, procedure (pipe and tubing).

Step 1. [Cut] Piping shall be cut square.

Step 2. Burrs shall be removed. [Remove all burrs.]

Step 3. The [Follow] manufacturer's recommended procedure shall be followed.

(4) Prohibited joints. Piping shall not be threaded.

Section 7. Installation. (1) Bends. Piping may be bent at a radius of not less than twelve (12) times the nominal diameter.

(2) Identification. A label shall be fastened to the main electrical meter panel stating "This structure has a nonmetallic water service."

(3) Working pressure. Working pressure shall not exceed 160 psi.

Section 8.Sizing. Piping shall be sized in accordance with 815 KAR 20:120.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

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

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS Chapter 13A, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the storage, handling and installation of aluminum soil, waste, vent and storm drain pipe and fittings, and identifies the manufacturer's [standard] specification number of the material accepted in those installations. This amendment is necessary to comply with KRS Chapter 13A drafting rules. [This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.]

Section 1. [All] Aluminum pipe and fittings shall be produced and labeled as [conform] to American Society of Sanitary Engineers [Engineering] (ASSE) **Specification [Standard]** #1045 and copies of this **specification [standard]** may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 41140. [, performance standard and installation procedures for aluminum drain, waste and vent pipe with end cap components.]

Section 2. General. (1) The installation of aluminum drain, waste, and vent (DWV) with end cap components for both sanitary and storm use shall be installed in compliance with this administrative regulation [as per these requirements].

(2) Handling instructions, installation instructions, special environmental conditions, workmanship, and assembly for aluminum drain, waste and vent (DWV) systems shall be followed by the installer.

Section 3. Shipping, Storage and Handling. (1) Aluminum pipe shall be shipped and stored on a flat, clean surface, free of nails, rocks, or other sharp objects which could potentially damage the pipe or coating (if supplied) or both. Pipe shall not be stacked more than ten (10) pieces high, unless strapped in bundles as received from the supplier **and** [, nor shall] one (1) pipe **shall not** rest unwrapped within another[, which is not a recommended practice for any lined material]. Pipe shall be supported on flat supports having a bearing face approximately four (4) inches wide, at intervals not greater than five (5) feet and at each end of the pipe.

(2) [Unless suitably crated,] Mechanical handling of pipe and accessories shall not be performed, unless they have been suitably crated. Manual handling shall be used on all sizes of pipe.

(3) [All] Pipe and joint components shall be stored away from extreme heat and [from] the danger of mechanical damage.

(4) Strict attention shall be paid to all safety regulations for handling and storage of pipe, fittings and accessories.

Section 4. Installation. (1) [Before starting the installation, all] Pipe, fittings, and joint components shall be examined for damage before starting an installation. [All materials that are] Bent, crushed, severely dented, or [otherwise] damaged materials shall not be used.

(2) Pipe shall be cut square and all ragged or burred edges, inside and outside shall be removed. [taking care not to disturb] The alcladding or the internal lining of the pipe shall not be disturbed. Pipe shall be cut with a circular saw equipped with a mitre box or guide to ensure a square cut. A twelve (12) or fourteen (14) inch diameter, semi or high speed steel, fine toothed, hollow ground, metal cutting blade shall be **used [satisfactory]**. [Tungsten carbide tipped blades that give a longer blade life are available.] A solid or liquid blade lubricant shall be used.

(3) Assembly procedure.

(a) [Slip] The Alcan Adapter Ring (complete with mastic seal) shall be slipped over the cut end of the Alcan Aluminum DWV Pipe.

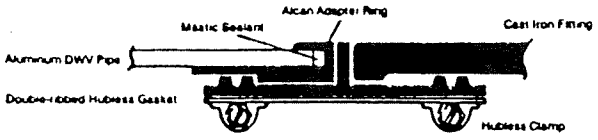
(b) [Slip] The hubless clamp shall be slipped over the aluminum pipe and out of the way until required.

(c) [Insert] The aluminum DWV pipe with adapter ring shall be inserted into the double-ribbed gasket.

(d) [Insert] The cast iron fitting shall be inserted into the other end of the double-ribbed hubless gasket.

(e) [Slide] The hubless clamp shall be slid over the gasket and [. Torque] the screws shall be torqued alternately to sixty (60) in./lb. completing the joint procedure.

[(f) The joint is now complete.]



(4) Open clearance. The opening through walls, partitions, and floors shall be sufficient in size to allow free passage of pipe, fittings, and joint components. The openings shall be smooth and free of harmful surfaces and projections.

(5) Sealed. If openings through walls, partitions, and floors require sealing, they shall be sealed with mortar, concrete, or other sealants compatible with aluminum. [Care shall be taken to ensure that] Aluminum drain, waste and vent (DWV) pipe shall [is] not be in contact with reinforcing steel embedded in concrete. If required by code [regulations] or deemed necessary by the installing plumber, the pipe shall be wrapped in suitable plastic or rubber tape over the area passing through the wall or floor, or coated with good quality bituminous paint.

NOTE: If a sealant containing magnesium oxychloride is used, the pipe shall be provided with additional protection.

(6) Service penetration firestops. Service penetration firestop assemblies shall be in accordance with local fire or building codes.

Section 5. Joints. (1) Coupled. Joints shall be made in accordance with the manufacturer's instructions, including end cap protection and other component details.

(2) Transition to other piping. Adapter fittings are available for joining aluminum drain, waste and vent (DWV) pipe to other types of pipe, and [.] only adapter fittings approved for the specific transition shall be used.

Section 6. Supports. (1) Hangers. If a hanger or support for aluminum drain, waste and vent (DWV) pipe is of a metal other than aluminum and if chlorides or other electrolytes are present or likely to

be present, the hanger shall be suitably separated and electrically isolated from the pipe. Supports and hangers shall have a broad support base and shall be free of burrs and rough edges to prevent abrasion of the pipe.

(2) Spacing. Horizontal pipe shall be supported at intervals not greater than ten (10) feet, at all joints, at all branch ends, and at all points where there is a change in direction. Trap arms shall be supported as close to the trap as possible. Vertical pipe shall be supported at intervals not greater than ten (10) feet.

Section 7. Buried Pipe. Only aluminum drain, waste and vent (DWV) pipe having a factory-applied external coating and marked "UGRD" shall be used underground. Joints shall be protected from corrosion by applying a tape wrap or shrink sleeve. The pipe shall be protected from mechanical damage by suitable structural shielding, if deemed necessary.

Section 8. Drain, Waste and Vent Systems Subject to Freezing. In servicing an aluminum drain, waste and vent (DWV) system to protect trap and fixtures from freezing, a glycol-water solution made up of sixty (60) percent by mass of glycol mixed in water shall be used. Alcohol antifreeze shall not be used[~~, because alcohol will evaporate and lose its effectiveness~~].

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), 198B.050(2), Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This **administrative** regulation relates to the methods that shall be used in joining certain types of piping materials together and [~~as well as~~] denoting the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also identifies the manufacturer's [~~standard~~] specification number of the material accepted in those installations. This amendment is necessary to comply with KRS Chapter 13A and to delete obsolete language regarding material used in subsoil drainage systems which are no longer under the jurisdiction of the department. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Water and Airtight Joints. [~~All~~] Joints and connections shall be made [~~permanently~~] gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. Joints in vitrified clay pipe shall be [~~conform to~~] ASTM specification C-425. Joints in concrete pipe shall be [~~conform to~~] ASTM specifications C-443. If [~~When~~] it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings with no [~~of not~~] more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material [~~to the other~~] may be made with proper fittings by using [~~the use of~~] a dispersion grade polyvinyl chloride ring produced and labeled as either [~~conforming to~~] ASTM C-443, C-425, C-594, C-564 or [~~and~~] D-1829 or a elastomeric polyvinyl chloride coupling. Copies of ASTM **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 3. Caulked Joints. [~~All~~] Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. [~~No~~] Paint, varnish or putty shall not be permitted until tests have been performed.

Section 4. (1) Screw joints. [~~All~~] Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as [~~conform to~~] ASTM D-735-61, grade N-R-615 BZ, or other material listed in [~~on~~] approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as [~~conform to~~] ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with [~~conform to~~] ASTM D-2665-69. Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with [~~conform to~~] ASTM D-2661-90 [~~69~~]. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as [~~that conforms to~~] ASTM 3033 or [~~and~~] 3034 shall be joined by solvent cement produced and labeled as [~~conforming to~~] ASTM D-2661-90 [~~69~~] for acrylonitrile-butadiene-styrene and ASTM D-2665-69 for polyvinyl chloride or with an elastomeric joint in compliance with [~~conforming to~~] ASTM D-3212-73.

(5) Copper pipe, brass and stainless steel tubing joints. Joints of copper pipe, brass and stainless steel tubing [~~joints~~] shall be soldered [~~joints~~].

(6) Expansion. An [~~Every~~] expansion joint shall be of an approved type and the [~~its~~] material shall comply [~~conform~~] with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by [~~first~~] cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

[~~(9) Joints in corrugated polyethylene subsoil drainage tubing. Joints in corrugated polyethylene subsoil drainage tubing shall be made by slip joints using appropriate fittings.~~]

(9) [~~(10)~~] Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device.

Section 5. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall

either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as [~~conform to either~~] ASTM C-564-70 [~~or CS 301-72~~]. [~~Joints that conform to commercial standard 301-69T shall have a stainless steel clamp.~~]

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as [~~conforming to~~] ASTM C-564, cast iron clamps produced and labeled as [~~conforming to~~] ASTM A-48 and stainless steel bolts and nuts produced and labeled as [~~conforming to~~] ANSI B-18.2.1 and ANSI B-18.2.2. Copies of ANSI **specifications** [~~standards~~] identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. [~~All~~] Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either [~~be~~] a screwed or caulked joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as [~~stamped~~] ASTM C-564-70. [~~All~~] Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or [~~to~~] galvanized steel pipe or [~~and~~] to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in a manner and of a material approved by the department. Joints in polyethylene and polypropylene piping shall be made by the heat fusion process. Joints in polypropylene shall [~~also~~] be made with a union joint. Joints in borosilicate pipe shall be a stainless steel mechanical joint. Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint at [~~of~~] the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material. The approved flashing [~~it~~] shall not extend [~~not~~] less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used if it is constructed in a manner allowing the flashing to [~~so it can~~] be caulked into a hub above the roof.

Section 15. Increasers and Reducers. If [~~When~~] different size pipes or [~~pipes and~~] fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section does not apply to nonmetallic installations.

Section 16. Prohibited Joints and Connections. A [~~Any~~] fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be [~~is~~] prohibited.

Section 17. Hangers and Supports. [~~All~~] Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system if the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for this type system.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260
NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to such charges as are fair, current, and reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based physician" means any **physician** [~~person~~] whose fees for services are billed by the hospital.

(3) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this regulation which are billed to payors other than pursuant to this regulation on a global basis.

(4) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(5) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this regulation.

Section 3. Calculation of Hospital's Base **and Adjusted** Cost-to-charge Ratio**; Reimbursement**. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 **on file as of November 30 of each calendar year**. The calculation for cost shall be the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of fifteen (15) percentile.

(3) [~~In no event shall~~] A hospital's adjusted cost-to-charge ratio **shall not** exceed eighty-five (85) percentile [~~. If a hospital's cost-to-charge ratio~~], including the fifteen (15) percentile addition, **except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Human Resources, Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed 100 percentile.**

(4) The reimbursement to a hospital for sevices or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable chares by its adjusted cost-to-charge ratio. [~~does exceed eighty five (85) percentile, it shall be reduced to eighty five (85) percentile.~~]

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Workers' Compensation Board.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Kentucky Workers' Compensation Board shall calculate and publish each hospital's adjusted cost-to-charge ratio on **or before February 1 of each calendar year** [~~an annual basis~~]. A new hospital shall be assigned a base cost-to-charge ratio of eighty-three (83) percentile until it has been in operation for one (1) full fiscal year.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Workers' Compensation Board pursuant to this regulation.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky will be deemed to have agreed to be subject to the provisions of this regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this regulation shall be submitted on a uniform billing form (UB-82) **or the successor to such form prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached** [~~. All bills shall include a statement of services which clearly and concisely sets forth the nature or type of service rendered~~]. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any **hospital-based physician** [~~practitioner~~] providing only the professional component shall bill for and be paid the professional component only. A **hospital-based physician** [~~practitioner~~] billing for the professional component shall submit the bill to the insurer on the **HCFA 1500, or successor to such form approved by the Commissioner of Insurance with the Kentucky Workers' Compensation Medical Provider's Certification attached** [~~Workers' Compensation Board SMS 1 (Statement for Medical Services)~~].

(3) All workers' compensation medical payment obligors adminis-

tering or paying bills subject to this regulation shall be required to audit the bills to ensure compliance with this regulation.

(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the Workers' Compensation Board setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) A hospital-based practitioner shall use the **HCFA 1500 or UB-82, or successor forms prescribed by the Commissioner of Insurance** [~~Workers' Compensation Board SMS-1 (Statement for Medical Services)~~] when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule adopted pursuant to 803 KAR 25:090.

(3) Any physicians performing services which are regulated pursuant to 803 KAR 25:090 (Kentucky medical fee schedule) in a hospital as defined in Section 1 of this regulation shall bill for services rendered pursuant to 803 KAR 25:090 only.

(4) Kentucky law requires the employer (or insurer) to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for **medical** treatment **under KRS 342.020. This does not prohibit the hospital from billing the employee for items or services not provided for under the Kentucky Workers' Compensation Act**.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

Section 10. Kentucky Workers' Compensation Medical Provider's Certification. All bills submitted by a hospital or hospital-based physician pursuant to this regulation shall be accompanied by a "Kentucky Workers' Compensation Medical Provider's Certification."

KENTUCKY WORKER'S COMPENSATION
MEDICAL PROVIDER'S CERTIFICATION

The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82, or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies, or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work-related injury or occupational disease.

Medical Provider _____ **Date** _____

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: November 5, 1992
FILED WITH LRC: November 5, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1992

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:040. Actuarial assumptions and tables.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 16.040, 61.645, 61.670, 78.780

NECESSITY AND FUNCTION: KRS 16.645(3), 61.670 and 78.545(23) requires the Board to adopt actuarial tables for the administration of the County Employees Retirement System (CERS), Kentucky Employees Retirement System (KERS) and State Police Retirement System (SPRS) and for the annual determination of assets and liabilities of the systems. This regulation includes the actuarial assumptions adopted by the board for fiscal years beginning July 1, 1990, and these assumptions establish the basis for all actuarial tables used in the administration of the three (3) retirement systems.

Section 1. The following actuarial assumptions are adopted by the Board of Trustees of the Kentucky Retirement Systems as required under KRS 61.670 and shall be used to determine actuarial tables as are necessary for the administration of the Kentucky Employees Retirement System as provide by KRS 61.510 to 61.705, the County Employees Retirement System under KRS 78.510 to 78.852 and the State Police Retirement System under KRS 16.505 to 16.652. These assumptions shall also be used for the annual actuarial valuation for determination of assets and liabilities of these retirement systems.

(1) Kentucky Employees Retirement System and County Employees Retirement System nonhazardous position members actuarial assumptions:

Interest: Eight (8) percent.

Valuation of Investments: Book value multiplied by the average ratio of market value to book value for the current valuation date and the four (4) preceding valuation dates. For the 1992 valuation, the book value shall be multiplied by the average ratio of market value to book value for current valuation and the three (3) preceding valuation dates.

Mortality: Preretirement - 1983 Group Annuity Mortality Table. Postretirement - same as preretirement. Mortality for members receiving disability allowances - Social Security Administration Disability Mortality Rates - Actuarial Study No. 75.

Turnover: Select and Ultimate Table as follows:

Age	Years of Service	Terminations per 1,000
All ages	0 to 1	250
All ages	1 to 2	80
All ages	2 to 3	50
All ages	3 to 4	40
All ages	4 to 5	35

5 OR MORE YEARS OF SERVICE

Age	Terminations per 1,000	Age	Terminations per 1,000
25	30	40	25.0
26	30	41	25.0
27	30	42	25.0
28	30	43	25.0
29	30	44	25.0
30	30	45	22.5
31	30	46	22.5
32	30	47	22.5
33	30	48	22.5
34	30	49	22.5
35	30	50	20.0
36	30	51	20.0
37	30	52	20.0
38	30	53	20.0
39	30	54	20.0
		55	15.0
		56	15.0
		57	15.0
		58	15.0
		59	15.0
		60	2.5
		61 and over	0.0

Disability: Annual rates varying by age as follows:

Age	Rate	Age	Rate
25	0.00022	45	0.00138
26	0.00022	46	0.00138
27	0.00022	47	0.00138
28	0.00022	48	0.00138
29	0.00022	49	0.00138
30	0.00026	50	0.00282
31	0.00026	51	0.00282
32	0.00026	52	0.00282
33	0.00026	53	0.00282
34	0.00026	54	0.00282
35	0.00038	55	0.00529
36	0.00038	56	0.00529
37	0.00038	57	0.00529
38	0.00038	58	0.00529
39	0.00038	59	0.00529
40	0.00070	60	0.00930
41	0.00070	61	0.00930
42	0.00070	62	0.00930
43	0.00070	63	0.00930
44	0.00070	64	0.00930
		65	0.00000

Retirement Rates: Early Retirement - At age 55-64, 20% are assumed to retire as soon as eligible for unreduced benefits. For other retirement rates, see table below.

Retirement Rates

Age	Retirement Rate
55-57	.03
58-59	.04
60-61	.05
62	.25
63-64	.10
65	.50
66-67	.20
68	.25
69	.40
70 & over	1.00

Salary Increase: 6 1/2% annually.

(2) State Police Retirement System, Kentucky Employees Retirement System and County Employees Retirement System hazardous members actuarial assumptions:

Interest: Eight (8) percent.

Valuation of Investments: Book value multiplied by the average ratio of market value to book value for the current valuation date and the four (4) preceding valuation dates. For the 1992 valuation, the book value shall be multiplied by the average ratio of market value to book value for current valuation and the three (3) preceding valuation dates.

Mortality: Preretirement - 1983 Group Annuity Mortality Table, plus a duty death rate of 5 deaths per 10,000 employees per year. Postretirement - 1983 Group Annuity Mortality Table. Mortality of members receiving disability allowances - Social Security Administration Mortality Rates - Actuarial Study No. 75.

Turnover: Annual rates varying by age as follows:

Age	Rate	Age	Rate
25	0.0304	40	0.0150
26	0.0304	41	0.0150
27	0.0304	42	0.0150
28	0.0304	43	0.0150
29	0.0304	44	0.0150
30	0.0338	45	0.0075
31	0.0338	46	0.0075
32	0.0338	47	0.0075
33	0.0338	48	0.0075
34	0.0338	49	0.0075
35	0.0244	50	0.0000
36	0.0244	51	0.0000
37	0.0244	52	0.0000
38	0.0244	53	0.0000
39	0.0244	54	0.0000
		55	0.0000

Disability: Annual rates varying by age as follows:

Age	Rate
25	0.00028
26	0.00028
27	0.00028
28	0.00028
29	0.00028
30	0.00033
31	0.00033
32	0.00033
33	0.00033
34	0.00033
35	0.00047
36	0.00047
37	0.00047
38	0.00047
39	0.00047
40	0.00088
41	0.00088
42	0.00088
43	0.00088
44	0.00088
45	0.00173
46	0.00173
47	0.00173
48	0.00173
49	0.00173
50	0.00353
51	0.00353
52	0.00353
53	0.00353
54	0.00353
55	0.00661
56	0.00661
57	0.00661
58	0.00661
59	0.00661
60	0.01162
61	0.01162
62	0.01162
63	0.01162
64	0.01162
65	0.00000

Retirement Rates: SPRS - Assumed 50% will retire upon completion of twenty (20) years of service; all others will retire upon attainment of age 55. CERS Hazardous - Assumed that 50% will retire as soon as eligible for unreduced benefits and balance will continue to age 55; Normal Retirement as soon as eligible. KERS Hazardous - Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue until age 60.

Salary Increase: 6 1/2% annually.

*The actuarial assumptions for salary increases are based on analysis of retirement system accounts for the period ended June 30, 1989 and are not to be construed as a policy of the Commonwealth of Kentucky or local government as to the rate of salary increases an employee may expect to receive.

Section 2. (1) Premiums for hospital and medical insurance shall be assumed to increase ten (10) percent per year.

(2) For KERS, CERS and SPRS, the insurance contribution shall be assumed to be the rate determined in the 1987 actuarial valuation increased each year by a percentage calculated to attain the level percent of payroll necessary to fund projected medical insurance premiums determined under the entry age normal funding method by the year 2007. In the 1992 actuarial valuation, the insurance funding rate shall be increased to reflect the higher valuation of assets. Subsequent increases to the insurance rate for the CERS, SPRS and the KERS shall be suspended until an experience study is conducted.

(3) In reviewing actuarial assumptions and contribution rates, the Board of Trustees shall give priority to insuring the necessary funding to provide hospital and medical insurance in accordance with KRS 61.702(2). If a change in assumptions or funding method results in a decrease in the cost of benefits, the board shall consider increasing the insurance funding by the amount of the decrease.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: November 11, 1992

FILED WITH LRC: November 13, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260

Louisville Road, Frankfort, Kentucky, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact person: Pamala S. Johnson

(1) Type and number of entities affected: 404 agencies participating in the Kentucky Employees Retirement System (KERS). 974 agencies participating in the County Employees Retirement System (CERS) and the Kentucky State Police.

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

1. First year: Changing to an asset valuation of book value modified by the average ratio to market value causes an immediate increase in the value of current assets. Because of current market performance, the cost to employers will be reduced from the cost determined under the unmodified book value method. The difference in the recommended employer contribution rate for the systems is as follows. The first year savings (FY 93-94) are given in percentage of total payroll and dollar amount (based on estimated salaries).

SYSTEM/GROUP	PERCENT OF PAYROLL	DOLLARS
KERS/nonhazardous	.51%	$ 5,090,430
KERS/hazardous	.68%	$ 461,460
Total KERS		$ 5,551,890
SPRS	1.34%	$ 419,220
CERS/nonhazardous	.39%	$ 3,332,820
CERS/hazardous	.88%	$ 1,230,930
Total CERS		$ 4,563,750

2. Continuing costs or savings: The effect on future years will be dependent upon future valuations and market performance.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no effect upon the agencies for reporting. All data is compiled by the retirement systems.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The change in asset valuation will have no impact on the Kentucky Retirement System.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The data necessary to determine the asset value under this method is already maintained by the retirement systems.

(3) Assessment of anticipated effect on state and local revenues: The immediate result from the change in the asset valuation method will be a decrease in the recommended contribution rate for the systems for FY 93-94. The only recommended increase in employer contribution rates over the current actuary recommendation is for KERS and CERS hazardous employers. The increase for KERS hazardous is less under this asset valuation method than under the unmodified book value assumption, and changing to this method results in an increase in percentage of payroll of 0.02% for CERS hazardous.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Using book value is a very conservative position. However, using full market value would result in large fluctuations in annual valuation results depending on the market's standing on the date of the valuation. This method utilizes a portion of the unrealized appreciation (or depreciation) averaged over a reasonable period of time to reduce the amount of fluctuation.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not applied. No reasonable justification exists for using different asset valuations for different systems.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. The administrative regulation relates to the 974 agencies participating in the County Employees Retirement System (CERS).

(3) State the aspect or service of local government to which this administrative regulation relates. The administrative regulation relates to the actuarial assumptions used to determine the employer contribution rates that participating local government agencies pay to the CERS.

(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: Changing to an asset valuation of book value modified by the average ratio to market value causes an immediate increase in the value of current assets. Because of current market performance, the cost to employers will be reduced from the cost determined under the unmodified book value method. The difference in the recommended employer contribution rate for the systems is as follows. The first year savings (FY 93-94) are given in percentage of total payroll and dollar amount (based on estimated salaries).

SYSTEM/GROUP	PERCENT OF PAYROLL	DOLLARS
CERS/nonhazardous	.39%	$ 3,332,820
CERS/hazardous	.88%	$ 1,230,930
Total CERS		$ 4,563,750

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:120. Participation of agencies.

RELATES TO: KRS 78.530 through 78.532, 78.535

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for participation of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which the employer purchases service credit for its employees by paying the actuarial cost of the service in a lump sum or by annual installments.

(2) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. Before an agency may participate in CERS, the

retirement system shall determine that it meets the definition of county in KRS 78.510 and that the agency is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 29 USC 1002(32).

Section 3. For participation under the alternate plan, the agency shall request an actuarial study through the retirement system to determine the cost of purchasing past service for all eligible employees at least ninety (90) days prior to the agency's desired participation date. The agency shall provide the information required by the actuary in writing or in the form of compatible magnetic media and shall pay the cost of the study and any revisions to the study to the actuary.

Section 4. The agency shall adopt an appropriate order that shall establish a participation date and the method of participation. The participation date shall be the first day of any month on or following the date the order is adopted and the method of participation shall be the alternate plan or the standard plan.

Section 5. The agency shall designate an individual to be responsible for reporting wages and employer and employee contributions to the retirement system. The retirement system shall provide forms, instruction and information concerning retirement statutes and regulations to the individual.

Section 6. The board shall review the agency's participation request at the first quarterly board meeting after the agency has reported contributions for a trial period of three (3) or more months. The board may deny participation if the agency fails to comply with retirement statutes governing participation of employees and reporting of contributions during the trial period. The board may deny participation by the agency if fewer than fifty (50) percent of its employees elect to participate in CERS. If the agency is phasing out another retirement plan or if the agency can provide justification for a lower election rate by its employees, the board may allow participation by an agency with fewer than fifty (50) percent of its employees electing to participate in CERS. The board may deny participation if the agency's participation will have an impact on the tax qualification of the system, the actuarial soundness of the system or other adverse impact which the board determines is not in the best interest of the members and beneficiaries of the system. If the board denies the agency's participation request, the contributions paid to the retirement system during the trial period shall be refunded to the employer and its employees.

Section 7. The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, Board of Trustees

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 22, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1992, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment only applies to local government agencies which are seeking to participate in the County Employees Retirement System.

(a) Direct and indirect costs or savings to those affected: No cost is associated with this administrative regulation.

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No increase in paperwork.

(2) Effects on the promulgating administrative body: No cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on local revenues.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This proposed amendment specifies additional conditions to be considered by the Board of Trustees in reviewing requests of agencies for participation in the systems.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This administrative regulation provides all local government agencies with the same criteria for acceptance and participation in the County Employees Retirement System.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to the participation of local government entities in the County Employees Retirement System.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation provides procedures for participation and sets out the primary conditions under which participation may be denied.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: This regulation does not impact the revenues of local government.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:135. Fees.

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

Section 1. Payment of Fees. (1) A renewal application may be paid by personal check.
(2) Other application fees shall be:
(a) Paid by:
1. Cashier's check; or
2. Certified check; or
3. Money order; and
(b) Made payable to the Kentucky State Treasurer; and
(3) Application fees shall not be refundable.

Section 2. Fees. (1) Except as provided by Section 3 of this administrative regulation, the fee for:
(a) Physical therapist licensure and for physical therapist's assistant certification by examination shall be $230;
(b) Endorsement application shall be $140;
(c) Reinstatement application shall be $105.
(2) The renewal application fee shall be $80.
(3) The application fee for reexamination shall be $147.50.
(4) If an applicant failed to take or complete an examination for which he registered, he shall pay an additional $147.50 if he notifies the board that he wishes to register for another examination.

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

GEORGIA KING, Chairman
APPROVED BY AGENCY: May 8, 1992
FILED WITH LRC: October 19, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1992 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215, (502) 595-4687.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: 62 exam applicants in 2nd half of licensure biennium. The $190 proposed fee was published in the July 1992 Administrative Register, but was incorrectly typed in a restyled version of 201 KAR 22:135 prepared to bring the regulation into compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings to those affected:
1. First year: $90/applicant per the mistyped fee.
2. Continuing costs or savings: N/A. Initial application fee.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The fee was correctly stated when published in the July 1992 Administrative Register; incorrectly typed in a restyled version of 201 KAR 22:135 prepared to bring the regulation into compliance with KRS Chapter 13A.
(a) Direct and indirect costs or savings:
1. First year: No change in board income from the fees initially submitted in the May, 1992 proposed amendments. Increase only reflects cost of exam to the agency.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: None identified.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation will replace emergency regulation 201 KAR 22:135E, Fees. These proposed amendments are substantially the same as those published in the July 1992 Administrative Register. There were no requests for a hearing on those proposed amendments. Typing errors were made in a revised format of the regulation which reduced the intended fee for examination applicants applying in the second half of the licensure biennium by $90. In addition, the word "before" vs "after" was incorrectly inserted in the new format version which completely alters the periods of fee prorating within a licensure biennium.
TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate turkey hunting rules and seasons for specific counties and wildlife management areas.

Section 1. Definition. "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

Section 2. [1.] Seasons and Counties Open to Wild Turkey Hunting. Wild turkey hunting season shall begin on the third Wednesday in April for fourteen (14) consecutive days in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Barren north of I-65, south of Highway 1297 and west of Highway 249, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Bracken, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Bullitt south of Salt River, Butler, Caldwell, Calloway, Carlisle except south of Highway 62 and east of Highway 51, Carroll, Carter north of I-64, Casey west of Highway 127, Christian, Clark, Clinton north of Highway 90 and west of Highway 558, Crittenden south of Highway 120 and east of Highway 641, south of Highway 70, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill north of the Kentucky River, Floyd east of Highway 23, Franklin except south of Highway 12 and west of Kentucky River, Fulton, Gallatin, Grant north of Highway 22 and west of I-75, Graves, Grayson except east of Highway 259 and north of West Kentucky Parkway, Green north of Highway 569, Greenup west of Highway 7, Hancock southeast of Highway 1389, Hardin except north of Highway 86 and northwest of Highway 62, Harlan, Harrison east of Highway 27, Hart except east of Highway 31E and south of Green River, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Knott, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence north of Highway 32, Letcher, Lewis east of Highway 59 and north of Highway 474, Lincoln east of Highway 27, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Lyon, Madison east of I-75 and north of Highway 52, Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion east of Highway 55 north of Lebanon and east of Highway 208 south of Lebanon, southwest of Highway 49 and west of Highway 55, Marshall, Martin south of Highway 40, Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade northwest of Highway 79, Menifee, Monroe south of Highway 100, Muhlenberg except north of Highway 70 between Highway 181 and Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Oldham north of I-71, Owen except south of Highway 22 and east of Highway 227, Owsley north of Highway 30 and west of Highway 399, Pendleton east of Highway 27 and south of Highway 22, Perry north of Highway 80 and east of Highway 15, Pike east of Highway 23, Powell, Pulaski south of the Cumberland River, south of Highway 80 and east of Buck Creek, Robertson, Rockcastle south of Highway 150 and west of I-75, east of Highway 1955, Rowan, Russell west of Highway 127 and south of Highway 92, Scott east of I-75, Shelby east of Highway 55 and north of Highway 12, Spencer west of Highway 55, Taylor north of Highway 70, south of Highway 70 and northeast of Highway 76, Todd, Trigg, Trimble east of Highway 421, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Washington east of Highway 55, Wayne southeast of Highway 90, and Whitley north of Highway 90 and west of Highway 25W. [Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Bullitt south of Salt River, Butler, Caldwell, Calloway, Carlisle except south of Highway 62 and east of Highway 51, Carroll, Carter north of I-64, Casey west of Highway 127, Clinton north of Highway 90 and west of Highway 558, Crittenden south of Highway 120 and east of Highway 641, Crittenden south of Highway 70, Christian, Cumberland, Edmonson, Franklin east of the Kentucky River, Fulton, Gallatin north of I-71, Graves, Grayson except east of Highway 250 and north of West Kentucky Parkway, Green north of Highway 569, Greenup west of Highway 7, Hancock east of Highway 69, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart west of Highway 31E, Henry, Henderson west of Highway 41, Hickman, Hopkins south of Highway 70, Jackson north of Highway 30, Knott north of Highway 80, Larue northeast of Highway 210, Laurel west of I-75, Letcher, Lewis east of Highway 59, Livingston, Logan north of Highway 106, Lyon, Marion west of Highway 527, Marshall, Martin south of Highway 40, McCracken, McCreary south of Highway 92 and west of Highway 27, McCreary north of Highway 92, Meade northwest of Highway 79, Menifee except south of Highway 460 and east of Highway 77, Monroe south of Highway 100, Muhlenberg except north of Highway 70 and west of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen west of Highway 127 north of Owenton and west of Highway 227 south of Owenton, Owsley north of Highway 30 and west of Highway 399, Perry north of Highway 80 and east of Highway 15, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Pulaski south of Highway 80 and east of Buck Creek, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Taylor northwest of gas lines at Saloma, Todd, Trimble east of Highway 421, Trigg south of Highway 68, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90 and northwest of Highway 92, Whitley north of Highway 90 and west of Highway 25W.]

(2) From October 1 through October 31, a hunter shall be permitted to hunt either sex only by archery [Fall either sex archery only season from October 1 through October 31] in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Breckinridge northwest of Highway 79, Bullitt south of the Salt River, Butler, Caldwell, Calloway, Carroll, Christian, Crittenden south of Highway 120 and east of Highway 641, south of Highway 70, Cumberland, Edmonson, Gallatin, Graves, Grayson except east of Highway 259 and north of West Kentucky Parkway, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart except east of Highway 31E and south of Green River, Henry, Hickman, Hopkins, Jackson north of Highway 30, Larue except south of Highway 61 and west of Highway 31E, Letcher, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Marion southwest of Highway 49 and west of Highway 55, Marshall, Martin south of Highway 40, McCracken, McCreary, Meade northwest of Highway 79, Menifee, Monroe south of Highway 100, Muhlenberg except north of Highway 70 between Highway 181 and Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen

except south of Highway 22 and east of Highway 227, Taylor north of Highway 70, south of Highway 70 and northeast of Highway 76, Todd, Trigg, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90. [~~Ballard except Ballard Wildlife Management Area north of Terrell Landing Road, Bullitt south of the Salt River, Butler, Caldwell, Calloway, Christian, Hart west of Highway 31E, Hopkins south of Highway 70, Larue northeast of Highway 210, Logan north of Highway 106, Muhlenberg except north of Highway 70 and west of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Todd, Trigg south of Highway 68.~~]

(3) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 5 [4] of this regulation.

Section 3. [~~2.~~] Bag and Possession Limits. A hunter shall be prohibited from taking more than:

(1) Three (3) turkeys in a calendar year;

(2) Two (2) turkeys with visible beards per spring season;

(3) One (1) turkey per day; and

(4) One (1) turkey in the fall.

[~~(1) No more than two (2) turkeys with visible beards per hunter per spring season shall be taken. No more than one (1) turkey per day shall be taken.~~

~~(2) No more than one (1) turkey shall be taken in the fall.~~

~~(3) No more than three (3) turkeys shall be taken in any calendar year.~~]

Section 4. [~~3.~~] Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall have in their possession a valid wild turkey permit and, unless exempted by KRS 150.170(3), (5), (6), (7) or (8), a valid annual Kentucky hunting license[~~, unless exempted by KRS 150.170(3), (5), (6), (7), or (8)~~].

(3) Turkey shall be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey shall [~~may~~] be taken only during daylight hours. Shooting turkey while they are roosting shall be prohibited.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) The hunter shall attach the transportation tag to the turkey immediately after taking.

(a) Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer on the day the turkey is taken except as required on specified wildlife management areas.

(b) The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer.

1. The hunter's portion of this card shall be retained in the hunter's possession until the turkey is processed.

2. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist.

(c) Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall not be hunted on any baited area or be taken by the aid of baiting.

(a) These areas shall be considered baited for thirty (30) days following the complete removal of all bait.

(b) The limitation found in paragraph (a) of this subsection shall not prohibit hunting while turkeys on areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown. [~~A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.~~]

(10) Turkeys shall not be hunted from boats.

(11) All turkey hunters less than eighteen (18) years of age shall be accompanied by an adult who shall maintain reasonable control of the underage hunter at all times while hunting.

(12) Calling or attempting to call wild turkeys using any turkey call to mimic the sounds made by a wild turkey shall be prohibited from March 1 to the opening day of spring turkey season in any area open to turkey hunting. This shall not apply to places where turkeys are not reasonably expected to occur.

(13) Turkeys shall not be taken by any means other than those specified in this administrative regulation.

Section 5. [~~4.~~] Seasons and Exceptions on Wildlife Management Areas. All provisions of this administrative regulation apply unless otherwise specified in this section.

(1) Wild turkey season in the Fort Knox Wildlife Management Area, located in Hardin, Bullitt and Meade Counties, shall be open on Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.

(a) Hunters shall check turkeys by 2 p.m. on the day harvested.

(b) Hunters shall be permitted to bag one (1) turkey per season.

(c) Turkeys taken on Fort Knox shall not count against statewide limits and shall not have to be tagged.

(d) Turkey hunters shall hunt in assigned area(s) only.

(2) Wild turkey season in the Land Between the Lakes Wildlife Management Area, located in Trigg and Lyon Counties, shall be open on April 21, 22, 24, 25 and 26 with an advanced application required, and April 28 through May 11.

(a) Wild turkey shall be taken only in designated areas.

(b) Hunters shall:

1. Check in and out;

2. Check a turkey before leaving the Land Between the Lakes; and

3. Shall affix an LBL game check card to the carcass.

(c) State game check cards shall not be required.

(d) Shooting hours shall be limited to daylight hours.

(e) Hunters shall be permitted to bag one (1) turkey per season.

(3) Wild turkey season in the Reelfoot National Wildlife Refuge, located in Fulton County, shall be open for quota hunt on April 2, 3, and 4.

(a) Hunters shall be permitted to bag one (1) turkey per season.

(b) A Reelfoot permit shall be required.

(4) Wild turkey season in the Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties, shall be open the first Saturday in April through the second Sunday in May.

(a) Hunting shall not be permitted on Tuesdays or Wednesdays.

(b) A post combination hunting-fishing permit shall be required.

(c) Shooting hours shall be limited to daylight hours.

(d) Hunters shall be permitted to bag two (2) turkeys per spring season.

(e) Turkeys taken on Fort Campbell shall not count against statewide limits and shall not have to be tagged.

(f) A Fort Campbell game check card shall be attached to turkeys before leaving the post and shall remain on the bird until processed.

(g) State game check cards shall not be required.

(5) Wild turkey season in the Blue Grass Ordnance Depot Activity, located in Madison County, shall be open on the third Wednesday in April for fourteen (14) consecutive days.

(6) Wild turkey season in the Ballard Wildlife Management Area in Ballard County north of Terrell Landing Road and Grayson Lake Wildlife Management Area in Carter County and that portion in Elliott County east of Bruin Creek shall be open for quota youth hunt Saturday and Sunday preceding the third Wednesday in April.

(a) Hunters shall be permitted to bag one (1) turkey per season.

(b) Shooting hours shall be limited to one-half (1/2) hour before sunrise until noon.

(c) Hunters shall be required to check in and out daily.

(d) Hunting shall be restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and hunt in assigned areas only.

(e) An in-person drawing shall be held on the respective wildlife management area at 1 p.m. on the first Saturday in April to determine who will get to hunt.

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Wild turkey season in the Higginson-Henry Wildlife Management Area, located in Union County, shall be open only for archery the third Wednesday in April for nineteen (19) consecutive days and either sex, October 1-31. Hunters shall be required to check in and check out daily.

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott Counties shall be closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County shall be closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties shall be open to legal muzzle-loading shotguns only.

(a) Breech-loading shotguns shall be prohibited.

(b) Legal archery equipment and crossbows with a working safety shall be permitted.

(12) Fishtrap Wildlife Management Area in Pike County shall be open to turkey hunting.

[~~(1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.~~

~~(a) Season: all Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.~~

~~(b) Hunters shall check turkeys by 2 p.m. on the day harvested.~~

~~(c) Bag limit: one (1) turkey per season. Turkeys taken on Fort Knox do not count against statewide limits and do not have to be tagged.~~

~~(d) Turkey hunters shall hunt in assigned area(s) only.~~

~~(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties.~~

~~(a) Season: April 15, 16, 18, 19, 20, 22 through May 5.~~

~~(b) Wild turkey shall be taken only in designated areas.~~

~~(c) All hunters shall check in and out, shall check any turkey before leaving Land Between the Lakes and shall affix an LBL game check card to the carcass. State game check cards are not required.~~

~~(d) Shooting hours: daylight hours only.~~

~~(e) Bag limit: one (1) turkey per season.~~

~~(3) Reelfoot National Wildlife Refuge located in Fulton County.~~

~~(a) Season: quota hunt April 2, 3, and 4 3, 4, and 5.~~

~~(b) Bag limit: one (1) turkey per season.~~

~~(c) Permit: Reelfoot permit required.~~

~~(4) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties.~~

~~(a) Season: First Saturday in April through the second Sunday in May with no hunting permitted on Tuesdays or Wednesdays.~~

~~(b) Permit. A post combination hunting fishing permit is required.~~

~~(c) Shooting hours: daylight hours only.~~

~~(d) Bag limit: two (2) turkeys per spring season. Turkeys taken on Fort Campbell do not count against statewide limits and do not have to be tagged.~~

~~(e) A Fort Campbell game check card shall be attached to turkeys before leaving post and shall remain on the bird until processed. State game check cards are not required.~~

~~(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: third Wednesday in April for fourteen (14) consecutive days.~~

~~(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.~~

~~(8) Higginson Henry Wildlife Management Area located in Union County. Season: archery only. Third Wednesday in April for nineteen (19) consecutive days and either sex, October 1 31. Hunters must check in and check out daily.~~

~~(9) Robinson Forest Wildlife Management Area in Breathitt and Knott counties is closed to turkey hunting.~~

~~(10) West Kentucky Wildlife Management Area in McCracken County is closed to turkey hunting.~~

~~(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties. Weapons: muzzle loading shotguns only. Breech loading shotguns are prohibited. Longbows, recurve and compound bows, and crossbows of at least 100 pounds pull with a working safety are permitted.~~]

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary

APPROVED BY AGENCY: August 18, 1992

FILED WITH LRC: November 13, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 13,000 persons will participate in the wild turkey hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for

authorization by this regulation would be required to possess a valid hunting license, a spring wild turkey permit and a fall archery permit unless exempt by regulations.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: Hunters will be asked to check their turkey at a check station and fill out a tag denoting specific information about the turkey taken.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $80,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 13,000 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Only one class of citizen, the hunter, is impacted by this regulation. However, wild turkey are unevenly distributed across the state of Kentucky and only certain counties have sufficiently large turkey populations to warrant hunting. This regulation recognizes the variations in turkey populations and only opens certain counties.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes___ No_X_ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The County Clerk's office personnel are involved in the sale of hunting licenses and turkey tags. This office receives a $.75 fee for selling licenses and turkey tags. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

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

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner 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. 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 November 13 [~~September 15~~], 1992, are incorporated by reference and shall be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property [~~(Amended 9/15/92)~~]
KCIW 02-03-02	Inventory and Control of Stores
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen and Staff Canteen
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry and Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 12-04-02	Hair Care Services
KCIW 13-01-01	Provision of Medical and Dental Care

KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Examination for Employees
KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-03-01	Inmate Rule Book
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence (Amended 11/13/92)
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages [~~(Amended 9/15/92)~~]
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Inmate Packages
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations [~~(Amended 9/15/92)~~]
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines (Amended 11/13/92)
KCIW 17-02-01	Identification Department Admissions
KCIW 17-05-01	Inmate Personal Property Guidelines (Amended 11/13/92)
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-01-03	Honor Program
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities (Amended 11/13/92)
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Community Leave

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 13, 1992

FILED WITH LRC: November 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 28, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 128 employees of the Kentucky Correctional Institution for Women, 348 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 November 13 [~~October 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 (Deleted 11/13/92)~~]
WKCC 02-01-01 Inmate Funds
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
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
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 (Amended 11/13/92)
WKCC 16-02-01 Inmate Correspondence (Amended 11/13/92)
WKCC 16-03-01 Inmate Access to Telephones
WKCC 16-04-01 Inmate Packages
WKCC 17-01-01 Inmate Personal Property
WKCC 17-02-01 Inmate Reception and Orientation
WKCC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01 Education Program [~~(Added 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)~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 28, 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.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [~~cabinet~~] or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 November 13 [~~August 14~~], 1992 are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, 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.

BCFC 01-02-01 Organization and Assignment of Responsibility
BCFC 01-04-02 Extraordinary Occurrence Procedure
BCFC 01-05-01 Procedures Office: Duties and Responsibilities
BCFC 01-08-01 Public Information and Inmate Access to News Media
BCFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01 Institutional Duty Officer's Responsibilities
BCFC 02-01-02 Fiscal Management: Accounting Procedures
BCFC 02-01-03 Fiscal Management: Agency Funds
BCFC 02-01-04 Fiscal Management: Insurance
BCFC 02-01-05 Fiscal Management: Budget
BCFC 02-01-06 Fiscal Management: Audit
BCFC 02-02-01 Inmate Accounts
BCFC 02-02-02 Inmate Control of Personal Funds
BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01 Purchase Orders
BCFC 02-04-01 Processing of Invoices
BCFC 02-05-01 BCFC Materials Receiving Procedure
BCFC 02-06-01 Property Inventory
BCFC 04-01-01 Employee Training and Development
BCFC 05-01-01 Information System
BCFC 06-01-01 Offender Records
BCFC 06-02-01 Storage of Expunged Records
BCFC 06-03-01 Court Trips
BCFC 06-03-02 Receipt of Order of Appearance
BCFC 08-02-01 Fire Prevention
BCFC 08-03-01 Fire Procedures
BCFC 08-03-02 Fire Extinguishers and Their Use
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02 OSHA Hazard Communication Program
BCFC 09-06-01 Search Policy/Disposition of Contraband
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area
BCFC 10-01-01 Special Management Inmates
BCFC 11-01-01 Food Services: General Guidelines
BCFC 11-02-01 Food Service: Security
BCFC 11-03-01 Dining Room Guidelines
BCFC 11-04-01 Food Service: Meals
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02 Health Requirements of Food Handlers
BCFC 11-06-01 Food Service: Inspection and Sanitation
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01 Staff/Visitor Meals
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02 Barbershop Services and Equipment Control
BCFC 12-04-01 Institutional Inspections
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01 Pest Control
BCFC 13-01-01 Organization of Health Services
BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 13-18-01 Infection Control [~~(Added 8-14-92)~~]
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 14-04-01 Inmate Participation in Authorized Research
BCFC 15-01-01 Due Process/Disciplinary Procedures
BCFC 16-01-01 Inmate Visiting
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations
BCFC 16-03-02 Inmate Packages
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
BCFC 17-04-01 Unauthorized Items
BCFC 17-05-01 Inmate Canteen
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic[~~/Vocational~~] School (Amended 11/13/92)
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning (Amended 11/13/192)
BCFC 20-03-01 Academic [~~and Vocational~~] Curriculum (Amended 11/13/92)
[~~BCFC 20-04-01 Educational Personnel Practices (Deleted 11/13/92)~~]
BCFC 21-01-01 Library Services
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates
BCFC 24-01-01 Social Services and Counseling Program
BCFC 24-01-02 Casework Services

BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 28, 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, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 43 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Fiscal Management
Department of Highways
Division of Toll Facilities
(Proposed Amendment)

600 KAR 2:010. Toll assessment on turnpikes.

RELATES TO: KRS 175.450, 175.470, 175.520
STATUTORY AUTHORITY: KRS 174.080, 175.470, 175.520
NECESSITY AND FUNCTION: KRS 175.450 authorizes the Turnpike Authority to fix, revise, charge, and collect tolls for transit over each turnpike project except to the extent that this authority is surrendered to the Department of Highways pursuant to a lease. This authority has been surrendered to the Department of Highways. This administrative regulation has been promulgated to establish the tolls to be collected at each toll collection station for each vehicle classification.

Section 1. The toll schedules set forth in TC34-12, "Transportation Cabinet, Division of Toll Facilities, Toll Schedule" revised October, 1989 and the Vehicle Classification Chart, Form TC34-15, revised August, 1992 [~~February, 1985~~] are hereby adopted and incorporated by reference as a part of this administrative regulation. All vehicle operators except those exempted by 600 KAR 2:020 shall pay the toll shown on the toll schedule for each vehicle classification.

Section 2. The forms incorporated by reference in Section 1 of this regulation may be viewed, copied or obtained from the Transportation Cabinet, Division of Toll Facilities, 9th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 by writing, telephoning or appearing in person. The telephone number is (502) 564-4628. The regular office hours of the Division of Toll Facilities are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday on those days worked by Kentucky state government. The forms may also be viewed at any of the toll collection stations on any toll road.

GLENN MITCHELL, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: October 29, 1992
FILED WITH LRC: October 30, 1992 at 2 p.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 28, 1992 at 2 p.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 hearing must in writing by December 23, 1992, so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made 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 December 23, 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 cancelled, written comments will only be accepted until December 23, 1992. Send written notification of intent to attend the public 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 Person: Sandra G. Pullen
(1) Type and number of entities affected: All vehicle operators in the Commonwealth who use the toll roads.
(a) Direct and indirect costs or savings to those affected:
1. First year: $5.7 million.
2. Continuing costs or savings: $5.7 million.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There is a direct loss of revenue to the Transportation Cabinet of $5.7 million for tolls not collected.
2. Continuing costs or savings: $5.7 million each year.
3. Additional factors increasing or decreasing costs: The loss is

mitigated by the reduction in work force on both the Pennyrile and Jackson Purchase Parkways.

(b) Reporting and paperwork requirements: Bookkeeping no longer required on these two parkways.

(3) Assessment of anticipated effect on state and local revenues: The loss to the road fund is anticipated to be offset by increased use of the parkways and therefore aid to the economy of western Kentucky.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The tolls were removed from these two parkways when the bonds were paid off, therefore the toll fee schedule had to be amended.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. There is a graduated fee schedule.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Parts 383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Parts 383, 390-397

NECESSITY AND FUNCTION: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm; or

(c) Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) Title 49, Code of Federal Regulations Part 383, Com-mercial Driver's License Standards; Requirements and Penalties, effective as amended through February 20, 1992;

(2) [~~(1)~~] Title 49, Code of Federal Regulations Part 390, General, effective as amended through August 31 [~~July 27~~], 1992;

(3) [~~(2)~~] Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through August 27 [~~January 1~~], 1992;

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

(5) [~~(4)~~] Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;

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

(7) [~~(6)~~] Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 31, 1992 [~~13, 1990~~];

(8) [~~(7)~~] Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, as effective October 8 [~~January 1~~], 1992; and

(9) [~~(8)~~] Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through September 24, 1992 [~~November 15, 1988~~].

Section 3. The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation are adopted:

(1) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted [~~by or incorporated by reference~~] in this administrative regulation.

(b) In spite of the requirements specified in paragraph (a) of this subsection, any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty- one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) Electric utility motor carriers while operating exclusively in

intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.

(8) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

Section 4. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

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

(3) Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

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

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 6. Cargo Securement. (1) The "CVSA Cargo Securement Tie-down Guidelines" adopted on February 15, 1992 [~~in October, 1990~~] by the Commercial Vehicle Safety Alliance is hereby incorporated by reference as part of this administrative regulation. The criteria in this document shall apply to the devices used in securing loads to commercial motor vehicles.

(2) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

Section 7. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on February 15, 1992 [~~1991~~] by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2)(a) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated.

(b) In accordance with Part II of the "North American Uniform Out-of-service Criteria", a law enforcement officer may impose restricted service conditions instead of placing the commercial motor vehicle out-of-service.

(c) Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of- service order shall constitute a separate violation of this administrative [~~these~~] regulation[~~s~~].

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary

APPROVED BY AGENCY: October 26, 1992
FILED WITH LRC: October 28, 1992 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by December 23, 1992 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made 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 December 23, 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 cancelled, written comments will only be accepted until December 23, 1992. Send written notification of intent to attend the public 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, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 30,000 motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: There should be a direct cost savings to the motor carriers or the drivers they employ by allowing the biennial medical examination of their drivers to be performed by a health care professional other than a

licensed driver. Assuming a $5 savings per medical examination, and assuming that 25% of the drivers are evaluated by a health care professional other than a licensed physician, the savings to the motor carrier industry in Kentucky should be in excess of $50,000 each year.

On the other hand, the adoption of the latest out-of-service criteria which allows a driver to be placed out-of-service for not possessing a proper commercial driver's license will impose a cost on motor carriers who are using commercial drivers not in compliance with state and federal law. The average cost of getting a replacement driver to the location where the illegal driver was placed out of service will be $200.

1. First year: Over $50,000 savings for those motor carrier companies operating in compliance with state and federal law. There will be an average cost $200 for each incidence of a driver being placed out-of-service for noncompliance with the commercial driver's license requirements.

2. Continuing costs or savings: Same each year but the number of illegal drivers should decrease with time.

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

(b) Reporting and paperwork requirements: Instead of transmitting a deficient commercial motor vehicle inspection form to FHWA showing what action the motor carrier took to correct the problem, the forms will be mailed to the Division of Motor Vehicle Enforcement.

(2) Effects on the promulgating administrative body: The federal Highway Administration's new requirement that the state agency issuing it receive the deficient commercial motor vehicle inspection report will cost the Transportation Cabinet a considerable amount of administrative time, efforts, and funds. Computerizing the reports and establishing a system to insure that each violation noted on the inspection form has been responded to will be expensive. However, as part of the same federal regulation change, FHWA made this effort eligible for reimbursement under the Motor Carrier Safety Assistance Program.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet's actions to uniformly determine that problems noted on inspection reports have been taken care of by the motor carrier will be a part of the Transportation Cabinet's overall application for a Motor Carrier Safety Assistance Program grant and our certification to the FHWA of compliance with 49 CFR Part 350.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the federal regulations are already applicable to all commercial vehicles being operated in interstate commerce and the federal government is strongly urging (later will mandate) states to apply the same provisions to intrastate operators.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: 601 KAR 11:050 is governed by a portion of 49 CFR Part 383. However, there is no conflict between the administrative regulations.

In addition, 601 KAR 1:025 adopts the federal regulation 49 CFR Part 177.825. The latest change to 49 CFR Part 397, adopted by this administrative regulation, replicates the routing requirements for radioactive materials. Since the US Department of Transportation has determined that there is no substantive difference between the two requirements, but adopts them both, the Transportation Cabinet is compelled to adopt them both in order to comply with KRS 174 and our federal Motor Carrier Safety Program Grant.

(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. The administrative regulation is tiered in that more stringent safety requirements are expected to be met on larger vehicles.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:025. Transporting hazardous materials; permit.

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435. KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by administrative regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) Title 49, Code of Federal Regulations, Part 171 effective October 1, 1992 [~~February 28, 1991~~]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(2) Title 49, Code of Federal Regulations, Part 172 effective October 1, 1992 [~~December 31, 1990~~]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(3) Title 49, Code of Federal Regulations, Part 173 effective October 1, 1992. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging. The requirements in this federal regulation for the transportation of hazardous materials by waterway, railway or pipeline are beyond the scope of this administrative regulation;

(4) [~~(3)~~] Title 49, Code of Federal Regulations, Part 175 effective July 1, 1992 [~~December 31, 1990~~]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(5) [~~(4)~~] Title 49, Code of Federal Regulations, Part 177, effective October 1, 1992 [~~December 31, 1990~~]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers trans-

porting hazardous materials on public highways; [and]

(6) [(5)] Title 49, Code of Federal Regulations, Part 178 effective October 1, 1992 [December 31, 1990]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and [.]

(7) [(6)] Title 49, Code of Federal Regulations, Part 180, effective October 1, 1992 [December 31, 1990]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

[Section 2. (1) Title 49, Code of Federal Regulations, Part 173 effective February 28, 1991 is incorporated by reference but only as it is applicable to the shipment of hazardous materials by air or highway. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging.

(2) The material published in Volume 55, Number 246, pages 52401 through 52729 of the "Federal Register" dated December 21, 1990 is incorporated by reference. This material will amend 49 CFR Parts 171, 172, 173, 175, 177 and 178 effective October 1, 1991. However, since January 1, 1991 compliance with the changes has been authorized by U.S. Department of Transportation. Therefore, the Kentucky Transportation Cabinet authorizes compliance with this material.

(3) The material published in Volume 56, Number 2, pages 197 through 201 of the "Federal Register" dated January 3, 1991 is incorporated by reference. This material will amend 49 CFR Parts 172 and 173 effective September 30, 1991. However, since January 3, 1991 compliance with the changes has been authorized by U.S. Department of Transportation. Therefore, the Kentucky Transportation Cabinet authorizes compliance with this material.

(4) This material incorporated by reference is available for public inspection and copying in the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, Frankfort, Kentucky 40622. Office hours are from 8 a.m. to 4:30 p.m., local prevailing time on Monday through Friday.]

Section 2. [3.] (1) Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of this permit, shall pay to the Transportation Cabinet a fee of twenty-five (25) dollars.

(2) The applicant for a general permit shall submit his application to the Department of Vehicle Regulation in the form prescribed in subsection (3) of this section by the department. The department shall make the forms available to any applicant.

(3) The front page of the form shall read as follows:

TC 95-1

Kentucky Transportation Cabinet
Department of Vehicle Regulation
Division of Motor Carriers
P. O. Box 2007
Frankfort, Kentucky 40602

Application For Permit For The Transportation of Hazardous Materials And/Or Radioactive Materials (This application shall be accompanied by a $25 filing fee)

CARRIER NAME:
STREET:
CITY: STATE: ZIP:

1. Type of Carrier: Private: For-Hire:

2. Classification of Hazardous or Radioactive Materials Transported:

INTERSTATE	INTRASTATE
Radioactive Material	Hazardous Material
Radioactive Waste	Hazardous Waste
	Radioactive Material
	Radioactive Waste

3. Individual associated with carrier who is designated to be contacted in event of emergency:

NAME: PHONE NUMBERS:
During Business Hours ( )
After Business Hours ( )
TITLE:
ADDRESS (if different from above):

4. Description of emergency procedures which the carriers shall follow in the event of an emergency:

I, the undersigned official of the above company, state that the above information is true and correct.

NAME_____ OFFICIAL TITLE_____

(4) The back page of the form shall inform the applicant of the basic requirements for application for a permit and shall contain the following:

TC 95-1

GENERAL INFORMATION REGARDING KENTUCKY'S
HAZARDOUS/RADIOACTIVE MATERIAL
Transportation Permit

The following information generally outlines the regulations of the Division of Motor Carrier's hazardous radioactive materials transportation requirements. If you have specific questions, contact the Division of Motor Carriers at the address or the telephone number below.

A general permit may be issued to any carrier who transports radioactive materials, either interstate or intrastate, and any carrier who transports hazardous materials intrastate in Kentucky. Needed definition follow:

"CARRIER" means a person engaged in the commercial transportation of passenger or property by land as a common, contract or private carrier or civil aircraft: except for those transporting passengers or property by pipelines, railways, or waterways.

"HAZARDOUS MATERIAL" means a substance designed as hazardous by the *Federal Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.) or the federal regulations adopted pursuant thereto.

Exception: Hazardous material shall not include agricultural wastes, coal mining wastes, utility waste (fly ash, bottom ash, scrubber sludge) sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

"RADIOACTIVE MATERIAL" means any material or combination of materials which spontaneously emit ionizing radiation.

The provisions of this permit do not apply to hazardous materials shipped by or for the U.S. government for military or national security purposes.

Vehicles used in the transportation of fuels to end users are also exempt from these requirements.

TO OBTAIN THIS PERMIT, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

(1) Complete and return the application (TC 95-1) to the Kentucky Transportation Cabinet, Division of Motor Carriers, with the required $25 yearly fee. A COPY OF THIS APPLICATION IS ON THE REVERSE SIDE.

(2) Applicant shall have on file with the Division an approved certificate of public liability and property damage insurance in the minimum amounts set forth in KRS 281.655.
These minimum limits are:

(a) Petroleum or Petroleum Products Less than 10,000 lbs. - $100,000/300,000/50,000

(b) All other hazardous/radioactive material as defined in KRS 174.405 - $100,000 SINGLE LIMIT COVERAGE

*The cabinet has adopted, by reference, the federal hazardous materials transportation regulations, 49 CFR (1978), as amended, in their entirety. Those parts pertaining to railways, pipeline and waterways are specifically excluded.

The cabinet may issue a permit based upon the information contained in the application. A COPY OF THIS PERMIT SHALL BE CARRIED IN THE TRANSPORTING VEHICLE WHILE IN THE COMMONWEALTH OF KENTUCKY. Each carrier shall be assigned only one permit, and you are given permission to photostat a copy for each vehicle operating under your authority and your permit. The general permit shall be renewed annually.

This permit does not preclude or encompass any other document required by Kentucky law. A carrier shall comply with all other applicable requirements for the transportation of hazardous materials within the Commonwealth.

PLEASE ADDRESS ALL MAIL TO:
KENTUCKY DEPARTMENT OF VEHICLE REGULATION
DIVISION OF MOTOR CARRIERS
QUALIFICATIONS/PERMITS BRANCH
POST OFFICE BOX 2007
FRANKFORT, KENTUCKY 40602
Phone: (502) 564-4540

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: October 16, 1992
FILED WITH LRC: October 23, 1992 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 28, 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 December 23, 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 December 23, 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 December 23, 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 transporters of hazardous materials in Kentucky.

(a) Direct and indirect costs or savings to those affected: (1)(a) This proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last year. The changes of significance are as follows: 1. Requiring a transporter of hazardous materials to comply with the recommendations of the "United States Recommendations on the Transport of Dangerous Goods" relating to hazardous communication, classification and packaging requirements. 2. Providing for the transportation of air bag inflators and air bag modules used in certain passive restraint systems under the provisions of these federal regulations rather than under the exemptions program. 3. Establishing a national registration program for certain persons engaged in the offering for transportation, and transportation, of certain hazardous materials in commerce. Those persons are required to annually file a registration statement with the U.S. Department of Transportation. The annual fee is $300. $250 of the total is to be used to establish a nationwide emergency response training and planning grant program for states and local governments. 4. Enhancing training requirements for persons involved in the transportation of hazardous materials. The enhanced training will increase a hazardous materials employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials, and improve emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials. 5. Regulating materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. Included are materials in a liquid phase having temperatures above 100 degrees Centigrade; materials in a solid phase having a temperature at or above 240 degrees Centigrade; materials in a liquid phase with flash points at or above 37.8 degrees Centigrade which are intentionally heated and offered for bulk transportation at or above their flash points. The changes are intended to communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding and to prescribe packaging requirements for these materials. 6. Requiring regular inspection and periodic requalification of acetylene cylinders. This is intended to improve the safe transportation of acetylene through detection of cylinder deficiencies.

The remainder of the changes are technical or clarifying in nature. All hazardous material transporters fall under the purview of the federal regulations. Therefore, the adoption of the changes to the federal regulations by the Kentucky Transportation Cabinet just allows enforcement of those federal regulations by the motor vehicle enforcement officers. However, the governing federal regulations are outdated. The overall impact on the transporters of hazardous materials should be positive since the U.S. Department of Transportation intended these changes to provide for a safer industry.

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 as a result of the changes to this administrative regulation.

(2) Effects on the promulgating administrative body: Minimal. The motor vehicle enforcement officers will have to be trained in the new requirements so that they can uniformly and safely enforce them.

(a) Direct and indirect costs or savings:

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: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by U.S. DOT. We don't want a carrier to be cited for complying with the new federal requirements.

(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. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
Division of Motor Carriers
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391.The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1993 for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) Until March 31, 1993, a commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

(a) Operates exclusively in intrastate commerce; and

(b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, adopted in 601 KAR 1:005.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form [~~from~~] TC 94-38, "Request for Medical Waiver" effective January, 1991. This form is incorporated by reference as a part of this administrative regulation.

(3)(a) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been [~~be~~] completed by a health care professional as defined in 49 CFR Part 390.5 and adopted in 601 KAR 1:005 [~~licensed doctor of medicine or osteopathy~~].

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(d)1. A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver.

2. The vision conditions form may be completed by a licensed doctor of optometry.

(e) The following supplemental medical report forms each with an edition date of December 1990, shall be incorporated by reference as a part of this administrative regulation:

1. "Cardiovascular Conditions";
2. "Neurological Conditions";
3. "Musculoskeletal Conditions";
4. "Metabolic Conditions";
5. "Alcohol or Other Drug Dependence";
6. "Mental and Emotional Conditions"; and
7. "Vision Conditions".

(f) The licensed doctor of medicine or osteopathy shall determine which ones of these supplemental medical report forms are applicable to the medical waiver applicant.

(4) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(5) A copy of the forms incorporated by reference may be obtained, inspected or copied at the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person, 8 a.m. to 4:30 p.m. Eastern time, Monday through Friday.

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the [~~driving history record of the~~] following:

(a) Driving history record of the applicant;

(b) Original medical examination form; and

(c) Supplemental medical report form;

(d) A skills test if suggested by the Medical Review Board, the applicant if his medical problem is exoskeletal or visual, or the provisions of this administrative regulation; and

(e) Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Paraplegics or quadriplegics.

1. If the applicant has a loss or impairment of foot, leg, arm, hand or fingers, he shall not be issued a medical waiver unless he passes a skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.

2. If a waiver is issued, it shall be vehicle specific.

3. If the applicant makes any adjustments to the specially adapted commercial vehicle or acquires a different commercial vehicle, it shall be approved by the Division of Driver Licensing prior to operation by the person with the medical waiver.

(b) Vision. To be considered for a medical waiver, the commercial driver shall:

1. Have a distance visual acuity of 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;

2. Have visual fields which are not narrowed to less than 110 degrees of total visual field;

3. Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;

4. Not wear bioptic lenses; and

5. Not have uncorrectable double vision.

(c) Hearing. A waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. A commercial driver with epilepsy or other condition which may cause loss of consciousness shall:

1. Have been seizure free for one (1) year prior to requesting the waiver;

2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and

3. Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular.

1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:

a. A fainting or blackout spell;

b. Uncontrollable attacks of choking, suffocation, or shortness of breath; or [~~and~~]

c. Uncontrollable instances of syncope or vertigo.

2. A commercial driver shall not have heart disease symptoms while:

a. Operating a motor vehicle; or

b. Sitting at rest.

3. A commercial driver shall not have:

a. Difficulty in breathing;

b. Painful breathing; or

c. An aortic or ventricular aneurysm.

4. A commercial driver's:

a. Blood pressure shall not be irregular; or

b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.

(f) Diabetes. A commercial driver shall not have:

1. An uncontrolled condition of diabetes; or

2. In the year immediately preceding a waiver request, had an instance of diabetes shock or coma.

(g) Alcohol or drugs. A commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. A commercial driver shall:

1. Not exhibit homicidal, suicidal, or destructive behavior;

2. In the year immediately preceding a waiver request, not have experienced bouts of:

a. Extreme anxiety;

b. Depression;

c. Paranoia;

d. Confusion;

e. Delusions; or

f. Hallucinations.

3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition.

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1993, he shall submit to medical reexaminations required by the Division of Driver Licensing.

(2) After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:

(a) The condition for which a waiver was issued has not worsened; and

(b) An additional nonqualifying condition has not manifested.

(3)(a) The driving history record of a commercial driver approved for a medical waiver may be evaluated by the Division of Driver Licensing:

1. At any time; and

2. At least once a year.

(b) If a review of the person's driving history record would cause the person to ordinarily be referred to the Medical Review Board under the provisions of 601 KAR 13:010, the waiver or waiver request shall be referred to the Medical Review Board for evaluation.

(4)(a) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit to the Division of Driver Licensing:

1. The test results; and

2. Recommendations for waiver refusal or restrictions on a medical waiver.

(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:

(a) Submit to a periodic report requested by the Division of Driver Licensing; or

(b) Report for a skills test.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver's:

(a) Physical or mental condition; or

(b) Employment or employment conditions.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to the:

(a) Commercial driver; and

(b) Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be referred to the Medical Review Board under the provisions of 601 KAR 13:010.

Section 6. Waiver Cancellation. If at any time after the issuance of a medical waiver, the Division of Driver Licensing cancels the waiver pursuant to the provisions of this administrative regulation, the driver's commercial driver's license shall also be cancelled.

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: October 26, 1992
FILED WITH LRC: October 28, 1992 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on December 28, 1992 at 2 p.m., local prevailing time in the Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by December 23, 1992 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made 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 December 23, 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 cancelled, written comments will only be accepted until December 23, 1992. Send written notification of intent to attend the public 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, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The 4,000+ motor carriers based in Kentucky and the drivers of their commercial motor vehicles.

(a) Direct and indirect costs or savings to those affected: The vast majority of these motor carriers operate on an interstate basis and are subject to the federal motor carrier safety regulations. The promulgation of this administrative regulation allows a commercial driver who operates exclusively on an intrastate commerce basis to apply for a medical waiver. In the first year 1300 persons applied for the medical waiver. These were persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.) We anticipate an additional 300 applications for a medical waiver this year.

1. First year: The cost of the additional medical examinations will be approximately $75 per person. However, of the 300 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of $20,000 per person the overall savings to the applicants will be almost $0.5 million.

2. Continuing costs or savings: With the continued savings by persons who have obtained a waiver, over $10 million each year.

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

(b) Reporting and paperwork requirements: The applicant for the medical waiver and his physician will be required to complete an application form and a medical report form. Due to a change in the federal regulations governing the original medical examination, the original medical examination may now be performed by a health care professional as defined in 49 CFR Part 390.5.

(2) Effects on the promulgating administrative body: The Transportation Cabinet will be required to review the 300 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

(a) Direct and indirect costs or savings: The cost to the Transportation Cabinet will be the cost of reviewing the applications.

1. First year: The cost the first year which is the second year of the program and the last year new applications will be accepted will be $20,000.

2. Continuing costs or savings: Since no new applications will be accepted after the first year, the review of the updated medical report forms each year will be accomplished at a cost of $20,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment was needed to bring the provisions of this administrative regulation into consistency with the medical examination provisions of 49 CFR Parts 390 and 391. The alternative was to require each person who was applying for a medical waiver to have his initial medical examination performed by a licensed doctor of medicine or osteopathy. In some cases this would mean that the applicant for the waiver would have to undergo and pay for two initial medical examinations and still undergo another one for the waiver application. This appeared to be too costly for the applicant and was rejected.

The new Section 6 was added so that there would be no misunderstanding that if a medical waiver were to be cancelled so would the commercial driver's license. This is not a change in policy or procedure - just a clarification.

(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: None

Tiering: Was tiering applied? Yes. Tiering was applied in this administrative regulation by allowing persons who would otherwise be ineligible for a commercial driver's license to apply for a medical waiver and setting standards for the issuance of the waivers.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 1:001. Implementation guidelines - Kentucky school facilities planning manual.

RELATES TO: KRS 157.420, 157.620, 157.622
STATUTORY AUTHORITY: KRS 156.070, 157.420
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved by the chief state school officer in accordance with requirements of law and based on a survey made in accordance with administrative regulations of the State Board for Elementary and Secondary Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. KRS 157.620 states construction needs shall be approved by the State Board for Elementary and Secondary Education. This administrative regulation provides for the development and adoption of a written plan by the school district describing construction and use of school facilities [~~to guide school administrators in meeting the needs of the district, and it repeals appropriate regulations~~].

Section 1. School districts shall develop a local facility plan once

every four (4) years in accordance with the schedule set by the chief state school officer. The State Board for Elementary and Secondary Education shall approve the facility plan submitted by the district upon the recommendation of the chief state school officer. Nothing in this regulation shall prohibit a school district from requesting an amendment to its facility plan at other times during the four (4) year cycle. ~~[The chief state school officer shall conduct or cause to be conducted a facilities survey of each school district every four (4) years, except for requested and justified amendments approved by the state board, and shall deliver to the local board of education the state board approved report which contains an assessment of existing conditions and a facilities plan which designates an organizational pattern, classification of school centers, and a priority schedule for construction and renovation needs.]~~

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "Kentucky School Facilities Planning Manual", November 1992 [~~July 1991~~], which is hereby adopted and incorporated by reference. Copies of this document may be inspected, copied, and obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board for Elementary and Secondary Education.

Section 4. The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district shall permit as determined by the chief state school officer and the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall remain in effect until any changes have been approved by the state board.

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 of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 13, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Michael Luscher

(1) Type and number of entities affected: 176 school districts.

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

1. First year: Cost to school district to accomplish facility plan approximately $2,000 per school during first cycle. Statewide over 4 years $2,754,000.

2. Continuing costs or savings: Future cycles (every 4 years) should have reduced costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increased cost dependent upon number of professional consultants districts contract.

(b) Reporting and paperwork requirements: Documentation increased to support district facility plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No projected increase or decrease in costs.

2. Continuing costs or savings: None projected.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Same as under current regulation.

(3) Assessment of anticipated effect on state and local revenues: Statewide facility need may fluctuate, however, has no effect to increase or decrease available revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary Education (SBESE) the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This administrative regulation designates such an agent for high school athletics and sets forth financial planning and review processes for that agent. Also, this administrative regulation adopts the constitution, bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. Financial Planning and Review Requirements. (1)

KHSAA shall submit the following financial documents to the SBESE:

(a) Draft budget for the next two (2) years in November of each year;

(b) Annual audit with KHSAA Commissioner's letter addressing any exceptions within thirty (30) days of receipt of the audit; and

(c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.

(2) KHSAA shall submit a strategic plan to SBESE by June 1 of each year.

(3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.

(4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:

(a) Athletic appeals;

(b) Eligibility rules;

(c) Duties of school officials;

(d) Contests; and

(e) Requirements for officials and coaches.

(5) KHSAA shall submit to SBESE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of individual(s), grade, school, and the action taken by KHSAA.

Section 3. [~~2.~~] The constitution, bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1992-93 as revised, adopted, and approved on April 17, 1992, are hereby incorporated by reference. This material may be inspected and copied at the Office of Legal Services Department of Education, First Floor, Capital Plaza Tower, Frankfort, 8 a.m. through 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 13, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person:

(1) Type and number of entities affected: The Kentucky High School Athletic Association (KHSAA).

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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Midyear and annual reports.

(2) Effects on the promulgating administrative body: Will improve state board's awareness of KHSAA.

(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: KHSAA will be required to submit plans, budgets, and annual reports to the state board.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: A memorandum of agreement was pursued, but this approach was taken to avoid the annual renewal of a M.O.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Is 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:450. Textbook and instructional material adoption process [~~program plan~~].

RELATES TO: KRS [~~156.031,~~] 156.400 to 156.476, 157.100 to 157.190, 160.345

STATUTORY AUTHORITY: KRS 156.410, 156.433, 156.437, 156.439, [~~156.447,~~] 156.474, 156.476, [~~157.190,~~] 157.110, [~~157.120,~~] 157.130, 157.140, 157.150, 157.160, 160.345

NECESSITY AND FUNCTION: KRS [~~156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS~~] 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; and KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. KRS 156.433 and 156.439 require that administrative regulations be written to define instructional materials; identify instructional materials eligible for purchase with state textbook funds; identify instructional materials which are subject to review before being approved for use; establish a procedure for the review of instructional material and a process for adding an instructional material to the approved list; establish a method for calculating and distributing a school district's textbook and instructional material allocation; and design a planning instrument for each school to use in documenting its textbook and instructional material needs during each adoption period. This regulation establishes the standards and procedures which are necessary to carry out the [~~such~~] statutory requirements dealing with textbooks and instructional materials.

Section 1. Definition. "Instructional material" means any print, nonprint or electronic medium of instruction designed to assist students in achieving the valued outcomes.

Section 2. [1.] The subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I - Social Studies K-12; Group II - Language Arts K-12 and Reading 9-12; Group III - Science K-12; Group IV - Music K-12 and Vocational Education 1-12; Group V - Mathematics K-12 and Computer Education 6-12; Group VI - Reading K-8, Literature, Art, Foreign Language, and Health K-12; Driver Education 10-12.

Section 3. [2.] (1) The Department of Education shall requisition and publishers submitting bids shall ship adequate textbook and instructional material samples to the Department of Education and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available textbook and instructional material samples, program descriptions, list of gratis items for districts adopting or purchasing books, and other pertinent bid information shall be provided by the bid opening. Samples and information not available at bid opening shall be shipped to the Department of Education, commission members, reviewers and curriculum committees as soon as possible and not later than thirty (30) days before the date of the commission hearing held under Section 4 [3] of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, the samples [such] shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board for Elementary and Secondary Education. All sales and transfers shall be properly receipted and filed with the Department of Education. Official adoption samples, however, shall be disposed of in accordance with KRS 156.470.

Section 4. [3.] (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents, [and] representatives and vendors of instructional material and providing an opportunity for agents, [and] representatives and vendors to make presentations on textbooks and instructional materials submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook or instructional material being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but shall clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook or instructional material in question;

(c) Sections of the textbook or instructional material being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook or instructional material is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 5. [4.] (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher or vendor has violated this regulation or the Kentucky Revised Statutes; or if the publisher or vendor has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers or vendors with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members, [and] local district personnel and selection committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks or instructional material. If there is sufficient evidence that publishers or vendors are guilty of any of the aforementioned, they shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall be taken.

(2) Publishers or vendors proposing to give local districts free-of-charge items, including but not limited to [kits,] duplicating masters, workbooks, and extra textbooks, if the [said] districts adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, publishers or vendors may sample gratis items to local districts for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a publisher's or vendor's textbooks or instructional materials.

(4) The State Textbook Commission shall have the right to refuse to execute or to cancel a publisher contract upon discovery that said publisher has violated any part of this regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook or instructional material contracts shall file with the Department of Education the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with [such] other information concerning the [said] agent, shall be made available to the proper authorities for the purpose of serving process.

Section 6. [5.] Publishers or vendors and local school districts may agree to pilot new textbook and instructional material programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook or instructional material program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The chief state school officer shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer. The request need not be in any prescribed form but shall clearly state:

(1) The publisher or vendor that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot shall be conducted;

(4) The schools where the pilot shall be conducted;

(5) The name of the school district staff member supervising the pilot;

(6) Beginning and ending date of pilot;

(7) Brief summary of evaluation procedures.

Section 7. [6.] Any school administrator or teacher who receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks and instructional materials shall be subject to the penalties of KRS 156.480.

Section 8. [7.] (1) The "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. This [Said] edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Curriculum Development [Textbook Services], Department of Education, 18th [15th] Floor, Capital Plaza

Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday-Friday.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 9. Inaccurate information, [8.] defective binding, workmanship or material shall be reported as soon as detected. Publishers and vendors of instructional materials shall be held responsible for all inaccurate or defective textbooks and instructional materials. Textbooks and instructional materials that show manufacturing defects in the first or second year of use shall be replaced by the publisher or vendor on a one-for-one basis. After the first two (2) years of use, replacement agreement shall be negotiated between the local district and the publishers or vendors. School districts shall start the replacement process as soon as it has been determined that textbooks or instructional materials are inaccurate or defective.

Section 10. [9.] (1) Request to substitute revised editions of textbooks or instructional materials under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks or instructional material to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book or instructional material is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample of the substituted textbook or instructional material and a list of the changes with page numbers of the revised edition or other reference data that compares it with the textbook or program presently listed [on the State Multiple List].

[Section 10. (1) Multivolume textbook programs for a single subject or a series for more than one (1) grade level are two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve (12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).]

Section 11. (1) The wholesale [and exchange] prices in Kentucky shall not exceed the lowest wholesale [and exchange] prices at which textbooks or instructional materials are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks or instructional material being sold in Kentucky, publishers and vendors shall lower the price in Kentucky.

(2) The retail price to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

[(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.]

Section 12. (1) Local school districts are hereby authorized[, for elementary school use,] to use state textbook funds [up to thirty-five (35) percent of the elementary school textbook funds] for the [optional] purchase of [supplementary textbooks, print and nonprint media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase basal textbooks or] instructional materials which may [to] be used in lieu of or to supplement [a] basal textbook programs for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" [for which textbooks are not listed on the State Multiple List];

(b) Primary [Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten] programs;

(c) [(d)] Special learning needs programs [education classes]; and

(d) [(e)] Courses and programs requiring State Board for Elementary and Secondary Education annual approval. [Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board for Elementary and Secondary Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.]

(2) Instructional [The following] materials which shall be reviewed before being placed on the state approved list shall include supplemental basal programs [eligible to be purchased with optional textbook funds:

(a) Preprinted organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List], kits, master units, and programmed instructional materials[, computer courseware and similar qualifying materials.

(b) Preprocessed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Preprinted or preprocessed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds].

(3) Electronic instructional materials shall be reviewed and approved by the Kentucky Education Technology System procedures and shall not be subject to approval by the State Textbook Commission.

(4) Instructional material not subject to review before purchase shall include the following:

(a) Reference books, trade books, pamphlets, magazines, periodical publications for student use and other supplemental print material.

(b) Supplementary video tapes, cassette tapes, slides, and recordings that are not ancillary parts of basal program.

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material.

(5) [(3)] The following materials and services shall not be eligible to be purchased with state textbook [optional] funds:

(a) [Rebinding, equipment other than minor audio-visual,]

Furniture, personnel services, teachers' guides and manuals, testing programs, [~~library books,~~] supplies and materials consumed in initial use such as workbooks, [~~and~~] raw and[~~/or~~] blank materials.

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories for language, computers, [~~and~~] televisions (including receiving sets and related equipment) and other equipment such as book binders.

[~~(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Department of Education. Annual approval shall be obtained before funds are obligated if there is a need to exceed the designated thirty-five (35) percent option. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.~~

~~(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Department of Education on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" shall include a copy of the State Board for Elementary and Secondary Education approval of the program and instructional materials to be used.~~

~~(6) Regulations relating to the purchase of media materials, audio-visual equipment and all other instructional materials and supplies by local school districts shall contain the following requirements:~~

~~(a) Items to be purchased should be identified as consumable or nonconsumable;~~

~~(b) Each local school district shall establish a per pupil allocation of funds to purchase equipment, materials and supplies, and of this allocation a portion shall be for consumable items and the remainder for nonconsumable items;~~

~~(c) Local school districts may use all or a portion of student fees as part of the per pupil allocation of funds to purchase instructional equipment, materials and supplies;~~

~~(d) Each local school district shall survey teachers to determine their needs for instructional equipment, materials, and supplies. The local district board of education shall take into consideration the survey of teacher needs in the purchase of instructional equipment, materials, and supplies; and~~

~~(e) A financial report on allocations to and expenditures for instructional equipment, materials and supplies shall be prepared annually by the school district and shall be a public record.~~]

Section 13. (1) The State Textbook Commission shall oversee the process for adding instructional material to the approved list. The commission shall review instructional material eligible for purchase with state textbook funds and shall receive assistance in the review and selection of instructional material from professional educators and lay citizens who shall serve on a contractual basis.

(2) The Commissioner of Education shall:

(a) Develop selection criteria and evaluation instruments for the review of instructional material after considering subject content, audience, performance assessment potential, format, and variety of learning styles.

(b) Recommend to the State Textbook Commission names of instructional material reviewers with knowledge about the area or areas being considered for adoption.

(c) Assist in the training of instructional material reviewers.

(3) The State Textbook Commission shall:

(a) Appoint, from a list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional material reviewers;

(b) Approve the evaluative criteria and forms developed for use by the instructional material reviewers;

(c) Review the instructional material and the reviewers' evaluation documents, as it deems necessary, in order to select from them a list of high quality instructional material; and

(d) Select, approve, and publish a list of high quality instructional material.

(4) The instructional material reviewers shall:

(a) Be comprised of twelve (12) individuals. Four (4) shall be classroom teachers with expertise in the content area considered for adoption and who are actively employed in elementary, middle, and secondary levels; two (2) shall be other educators; two (2) shall have expertise and experience working with instructional technology; one (1) shall be a library/instructional media specialist; one (1) shall have expertise in alternative ways of learning; and, two (2) shall be parents with children currently enrolled in the public schools;

(b) Represent gender, geographic, and ethnic diversity;

(c) Attend meetings and training sessions as requested by the Department of Education;

(d) Review instructional material except those that are ancillary to basal textbook programs to determine those of high quality using the instruments of evaluation approved by the State Textbook Commission; and

(e) Submit to the State Textbook Commission their recommendations for instructional material to be placed on the state's approved list and shall include for documentation the instruments used in the evaluation process.

Section 14. [~~13.~~] (1) [~~The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and programs per subject in any one (1) grade in grades kindergarten through eight (8). High schools, grades nine (9) through twelve (12) automatically adopt all listed textbooks.~~

~~(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.~~

~~(3)~~] Districts may purchase [~~any or all~~] adopted textbooks, instructional materials, or programs in any number and combination based on identified pupil needs rather than grade level assignment.

(2) Every school in the Commonwealth with grades primary through eight (8) shall complete an annual plan to identify purchases made with textbook and instructional material funds according to the textbook adoption cycle.

(3) Each school's plan shall be for six (6) years and may be revised every year. The plan shall include textbooks and instructional materials which best implement KERA's goals and valued outcomes and shall include the following:

(a) Textbooks on the approved list;

(b) Textbooks not on the approved list but that meet selection criteria;

(c) Instructional material on the approved list;

(d) Instructional material not on the approved list but that meet selection criteria;

(e) Electronic instructional materials not on the Kentucky Education Technology System approved list but that meet selection criteria; and

(f) Instructional materials not on the approved list but eligible for purchase with state textbook funds.

(4) The plan shall provide for opportunities for cooperation among teachers in primary through grade eight (8) for the selection of materials.

(5) The Kentucky Department of Education shall make available to schools a guide and format to use in documenting their plans that shall include the following: the school council's or school's planning process, individuals involved in the process, the items to be purchased, and budget required to provide them.

(6) Each school's textbook and instructional material purchase plan shall be approved by the school council, or if none exists, by the local board of education. The local board shall approve the plan as to sufficiency of funding to support purchases.

(7) Each school's plan shall be kept on file in the district's central office, and the superintendent shall certify by a letter to the Kentucky Department of Education that all approved plans have been received and meet Kentucky Department of Education standards.

(8) If the local board does not approve a school council's plan as to funding, the board shall return the plan to the school council for reconsideration. The board shall provide a specific written explanation as to its reasons for rejection.

(9) If the board of education and school council are unable to resolve the dispute regarding the school council's plan, the school council may submit the matter in writing on appeal to the Commissioner of Education for resolution. Upon receipt of the written request for resolution, the commissioner shall:

(1) Provide a copy of the written request to the other party to the dispute;

(2) Provide notice to the other party to the dispute that it may file with the department an explanation for its position in the matter within twenty (20) days after receipt of the notice; and

(3) Issue his binding decision within thirty (30) days after the deadline for the filing of the response to the appeal.

Section 15. [~~14.~~] (1) Pupils in grades primary [~~kindergarten~~] through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.

(3) Request for large print textbooks and material shall be directed to the Department of Education.

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Kentucky Instructional Material Resource Center when no longer needed.

(5) Large print textbooks and materials purchased by the Department of Education shall not be charged to the textbook account of the local school district.

Section 16. [~~15.~~] (1) The Department of Education shall prepare textbook and instructional material budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing [~~full~~] basal textbook and instructional material programs during [~~the first year of~~] each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively. [~~After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.~~]

(2) When allocating funds for the purchase of textbooks and instructional materials, the Department of Education shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of [~~elementary school~~] funds allocated to each school district for primary through grade eight (8) shall be mailed to the superintendent after March 1. The statement shall reflect the [~~balances from the previous year,~~] allotment for the ensuing year, [~~sales and fines for the past year, and~~] growth adjustments providing funds to purchase books and materials for new pupils, and a suggested amount to be used for shipping and replacements.

(4) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the chair of each school council, or principal, if none exists, of the per-pupil allotment to be expended by each school. [~~School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.~~]

(5) Money appropriated in the current fiscal year shall be spent on textbooks and instructional materials in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on textbooks and instructional materials in accordance with its plan.

(6) After July 1, checks shall be issued to districts having on file in the Kentucky Department of Education a letter from the superintendent certifying the receipt of all approved plans.

(7) Local school districts shall establish and maintain one (1) centralized textbook and instructional material account for primary through grade eight (8) subject to audit. All state textbook and instructional material funds shall be processed through this account.

Section 17. [~~16.~~] (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12) by renting to pupils all currently adopted, state-provided textbooks and purchasing and renting textbooks from each scheduled incoming adoption group. This shall not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee based on the cost of the adoption group scheduled for purchase and the cost of replenishments. The maximum rental fee shall be based on six (6) [~~four (4)~~] dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed three (3) [~~two (2)~~] dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) The school district may order [~~shall requisition~~] textbooks from the State Multiple List for the grades nine (9) through twelve (12) rental program from [~~the Department of Education. The Department of Education shall process the requisitions to~~] the different publishers. The textbooks are to be shipped to the local school districts. Publishers shall invoice the local school districts.

(4) Local school districts shall establish and maintain one (1) centralized textbook rental program account subject to audit. All textbook rental monies shall be receipted to pupils and rental monies, orders for textbooks [~~requisitions~~], and payments to publishers shall be processed through the centralized account. The chair of the school council, or principal, if none exists, shall be notified regarding the school's balance.

(5) School districts may [~~shall~~] purchase a complete basal textbook program for grades nine (9) through twelve (12) the first year of each scheduled adoption for each subject in the adoption group for which basal textbooks are appropriate.

(6) Each secondary school's textbook and instructional materials purchases shall be approved by the school council, or if none exists, by the local board of education. [~~The Department of Education shall provide local districts with requisition forms, an annual inventory report, and the information necessary for districts to maintain an efficient textbook rental program for grades nine (9) through twelve (12).~~]

(7) All textbook statutes and administrative regulations governing the textbook program for elementary and secondary schools not invalidated by the textbook rental program statutes and administrative regulations shall be applicable to the textbook rental program for grades nine (9) through twelve (12).

Section 18. [~~17.~~] (1) The Department of Education shall provide an annual report format [~~and requisition forms~~] to all school districts.

[~~These forms shall be prepared in duplicate.~~] The original copy shall be sent to the Department of Education and the second copy retained by the district. The annual report [~~(FT 8) and requisition (FT 9) may be filed after March 1 and~~] shall be filed by June 30.

[~~(2) The Department of Education, upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Department of Education.~~]

(2) [~~(3)~~] All adopted textbooks and instructional materials purchased with state textbook funds shall be purchased by the local district [~~through the office of the Department of Education~~].

(3) [~~(4)~~] Publishers shall ship direct to local school districts [~~by prepaid freight or United Parcel Service and issue invoices in triplicate to the Department of Education~~].

(4) The Department of Education shall guarantee a contract price for all adopted textbooks and approved instructional materials.

[~~(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Department of Education. The Department of Education may then order payment.~~]

(5) [~~(6)~~] All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(6) [~~(7)~~] Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(7) [~~(8)~~] A complete record shall be kept by the school district for all state-provided textbooks for grades primary [~~kindergarten~~] through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 shall be furnished upon request in quantities equal to number of teachers or principals.

(8) [~~(9)~~] When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 shall be furnished upon request in quantities equal to pupil membership.

Section 19. [~~18.~~] The Department of Education shall encourage [~~and facilitate~~] the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Department of Education shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list shall deal directly with the [~~request the Department of Education to initiate a transfer. The~~] district having possession of the surplus textbooks [~~requested by a district shall ship the books and notify the Department of Education the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district shall notify the Department of Education. The Department of Education shall interaccount funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account~~]. The cost to the receiving district of all transferred textbooks shall be fifty (50) percent of the wholesale price plus transportation.

Section 20. [~~19.~~] Pupils or parents shall compensate school districts for textbooks and instructional materials lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks and instructional materials; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks and instructional materials; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks and instructional materials.

Section 21. [~~20.~~] (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 9 [8] hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortages and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Department of Education with the annual report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Office of Management Support Services [~~Department of Education~~] for payment. [~~Such payments shall not be charged to the textbook account of local school districts.~~]

Section 22. [~~21.~~] (1) District superintendents shall make an accurate count of all state-provided textbooks and approved instructional material for grades primary [~~kindergarten~~] through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) under adoption that are suitable for classroom instruction and report same on the annual report [~~(FT 8)~~].

[~~(2) The Department of Education shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.~~]

(2) [~~(3)~~] The local superintendent shall assume responsibility for the disposal of [~~unclaimed~~] textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the [~~unclaimed~~] textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the [~~unclaimed~~] textbooks available to pupils within the district.

(c) Publicize in the local newspaper that [~~unclaimed~~] textbooks are available to individual residents of the local district. [~~Unclaimed~~] Textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the [~~unclaimed~~] textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the [~~unclaimed~~] textbooks available to recycling operations.

(f) Destroy [~~unclaimed~~] textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of [~~unclaimed~~] textbooks shall be retained by the local district.

Section 23. [~~22.~~] (1) No child shall be denied full participation in any educational program due to an inability to purchase any and all necessary textbooks. Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of such children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures whereby, at the beginning of the school year, pupils or their parents

are given written notice of the availability of, and guidelines and procedures for obtaining, free and reduced rental textbooks. Such policies and procedures shall also insure that the following occur:

(a) Any verbal or written communication with students or parents regarding payment of fees for textbooks shall include a statement that free or reduced rental textbooks will be made available to students in accordance with this section and a statement clearly explaining school procedures for obtaining such textbooks; and

(b) Any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) In exceptional circumstances, at the discretion of a local school district not providing free textbooks to all pupils, pupils who do not meet free or reduced price lunch guidelines may be provided free textbooks.

(4) Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon said department's request. Such records shall include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks.

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(5) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or disability [~~handicap~~] and there shall be no overt identification of any such children.

Section 24. (1) [~~23.~~] Every public school student shall have access to necessary a textbook(s) or instructional material(s) which shall be [~~or facsimile~~] furnished free of charge[~~, for each subject studied~~] in grades primary [~~one (1)~~] through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the [~~such~~] textbook(s) available for the reasonable rental fee set forth in Section 17 [~~16~~] of this regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of textbooks and instructional materials needed for each student and each classroom shall be determined at the school level. [~~Materials for kindergarten classes shall be purchased to comply with the minimum equipment and materials list of the state accreditation standards. The only exceptions to this regulation shall be health, physical education, music, and art textbooks, which may be purchased by the school district in classroom sets one (1) through twelve (12) and which may be available to be taken home by students for further study. Vocational education textbooks may be purchased in reference sets, classroom sets, or individually as identified by content area in the guidelines for textbook adoption. All other exceptions necessitated by curriculum needs or organizational patterns shall be approved by the chief state school officer.~~]

Section 25. [~~24.~~] Forms [~~FT-21 designated in Section 12(5) of this regulation; FT-8 and FT-9 designated in Section 17(1) of this regulation;~~] FT-5, dated April, 1975, and FT-5A, dated April 1976, and [~~designated in Section 17(8) of this regulation;~~] FT-6, dated April, 1975, and FT-6A, dated June, 1979, designated in Section 18 [~~17(9)~~] of this regulation; and FT-16, dated February, 1984, and FT-16A, dated March, 1986 designated in Section 21 [~~20~~] (2) of this regulation are incorporated herein by reference, and may be inspected, copied, and obtained from the Division of Curriculum Development [~~Textbook Services~~], Department of Education, 18th [~~15th~~] Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 13, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Betty Edwards

(1) Type and number of entities affected: 176 local school districts.

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

1. First year: There will be no total revenue impact, but schools/districts will have more control in the designated use of funds.

2. Continuing costs or savings: Same as #1.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: School annual purchasing plan.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: Expenses for instructional materials review committee, printing of additional evaluation forms.

2. Continuing costs or savings: Expenses for instructional materials review committee, printing of additional evaluation forms.

3. Additional factors increasing or decreasing costs: State will no longer be involved in ordering textbooks on primary -grade 8.

(b) Reporting and paperwork requirements: Proposed revision will result in additional paperwork and time for developing evaluative criteria and review materials for instructional materials by staff in the Division of Curriculum.

(3) Assessment of anticipated effect on state and local revenues: Funding levels should not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Nonapplicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Nonapplicable

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those schools or entities regulated by it. Disparate treatment of any school or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the

Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 10:050. Authority to approve courses not in program of studies [; procedure for offering].

RELATES TO: KRS [156.031,] 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.160 mandates that the State Board for Elementary and Secondary Education adopt administrative regulations with respect to the courses of study for the different grades in the common schools. This regulation establishes procedures for seeking [State Board of Education] approval for courses that are not listed in the "Program of Studies for Kentucky Schools, K-12."

Section 1. Any school desiring to offer a course not listed in the "Program of Studies for Kentucky Schools, K-12", as adopted in 704 KAR 3:304, shall secure the approval [of the State Board of Education upon recommendation] of the commissioner of education or his designee [chief state school officer] before such a course is offered. Failure to secure [state board] approval before the course is initiated shall result in the course not being recognized for graduation credit. No course shall be considered for approval that is inconsistent with Kentucky Administrative Regulations, Kentucky Revised Statutes, or the Constitution of the Commonwealth of Kentucky. Any school implementing a course not listed in the "Program of Studies for Kentucky Schools, K-12" [an experimental program or enrichment course hereunder] shall notify the State Department of Education when the [program or] course is terminated.

Section 2. (1) The procedure for seeking approval of a course not listed in the "Program of Studies for Kentucky Schools, K-12" [an experimental program or enrichment course] shall be as follows: the school council, or where none exists, superintendent of a county or independent school district or the administrative head of a nonpublic school voluntarily complying with state board curriculum standards and seeking permission to offer an unlisted course shall notify the Deputy Commissioner of Learning Support Services [head of the Bureau of Instruction] in writing no later than August 1 [May 31] when requesting approval for a course [program] beginning the first semester and November 1 [September 30] when requesting approval for a course [program] beginning the second semester. The application shall contain the following information:

(a) The name or title of the [program or] course;
(b) A statement indicating need for the course;
(c) A statement of the objectives of the course;
(d) A brief description of how the course meets the goals and outcomes as established in KRS 158.6451 [the scope and content of the course];
(e) A statement describing adequacy of staff, facilities, equipment, and materials for implementing the course;
(f) A description of deviation from the "Program of Studies for Kentucky Schools, K-12;"
(g) The amount of credit to be allowed for the course or the extent of grade levels involved in the proposed offering;
(h) Proposed method of evaluation; and
(i) Anticipated length of experiment.

(2) Any request for approval of a course not listed in the "Program of Studies for Kentucky Schools, K-12" shall be reviewed by staff members of the Bureau of Learning Support Services, who shall prepare a recommendation and forward the request to the Commissioner of Education or his designee for action.

(3) [(2)] A written evaluation of the [any] approved [experimental program or enrichment] course shall be submitted to the Deputy Commissioner of Learning Support Services [head of the Bureau of Instruction] at the close of the school year.

[Section 3. The chief state school officer shall submit the request to the State Board of Education, accompanied by his recommendation. Following action of the State Board of Education, local school districts or nonpublic schools having submitted a request to offer an experimental program or enrichment course shall be notified in writing within ten (10) days of the board decision.]

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 of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Betty Edwards
(1) Type and number of entities affected: 176 local school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Decreases paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and [,] sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose. [, and] The general criteria in this administrative regulation set forth [herein] covers the regulatory policies.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment [handicap] to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

Section 2. Comparable Benefits. Except as provided in this section, the agency shall fully consider any comparable benefits available under any other program to an individual [with a handicap] or to members of that individual's family, to meet, in whole or in part, the cost of vocational rehabilitation services.

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Evaluation of rehabilitation potential;

(b) Counseling, guidance and referral;

(c) Vocational and other training services including personal and vocational adjustment training, books, tools, and other training materials that are not provided in institutions of higher education;

(d) Placement;

(e) Rehabilitation engineering services;

(f) Services listed in paragraphs (a) through (e) of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall not be required if such consideration would place the applicant or client at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(3) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered under such programs, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) If the individual [who has a handicap] refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released.

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal

information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Employability Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant meets the reasonable expectation criteria of eligibility.

Section 5. Employees' Application for Services. (1) In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest, an applicant who is an agency employee and the agency shall adhere to the following procedures when such an employee wishes to apply for rehabilitation services:

(a) The employee shall advise the regional administrator of the intent to apply.

(b) The regional administrator shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee-applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.

Section 6. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the branch manager. The branch manager shall assign a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.

Section 8. Legal Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services.

Section 9. Maintenance. The agency shall not subsidize a client's home.

Section 10. Payment Rates for Purchased Services. (1) The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.

(2) The department shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant or client or a family member any payment for services unless the amount of such charge or payment is previously known to and, where applicable, approved by the agency.

(3) The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee for service basis.

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency with the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of

the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If particular procedure or mode of treatment is not available in state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The agency shall not pay for job placement services from a private for profit employment or placement agency.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and attendant care shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.

Section 14. Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.

(b) If the attending physician feels the prognosis is guarded, the agency staff shall request a letter indicating the client's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be served.

Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.

Section 16. Second Opinions. The agency may seek a second opinion from a qualified practitioner before determining the eligibility of an applicant or before authorizing services for a client.

Section 17. Self-employment Enterprises. (1) The following shall be met prior to planning for self-employment for clients of the agency:

(a) Clients shall agree to undergo appropriate evaluation to determine work potential, including mental and physical abilities, and interests, abilities, aptitudes, personality traits and other pertinent characteristics.

(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.

(c) Clients shall demonstrate that they can work with minimal or no supervision.

(d) The agency may require clients to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(e) Clients shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.

(f) The agency may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any agency purchased equipment expire.

(2) The Director of Field Services or a designee may approve proposed self-employment enterprises requiring expenditures in excess of $5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;

2. Applicability of statewideness; and

3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.

(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation).

Section 18. Sex Change. Agency funds shall not be used to pay for sex change surgery.

Section 19. Sheltered Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of thirty-five (35) [~~twenty-five (25)~~] percent production of a nondisabled [~~nonhandicapped~~] worker.

Section 20. Supported Employment. Supported employment services exceeding $3500 per client served in individual placements and $1750 per client served in group placements shall require approval of the Director of Support Services or a designee.

Section 21. Tools and Equipment. The agency may recover tools, equipment, and supplies if the client ceases to use the equipment for the pursuit and practice intended or upon the death of the client.

Section 22. Training. (1) Postsecondary training may be provided for clients pursuant to this section.

(a) Tuition and initial registration fees provided to the training institution of the client's choice shall not exceed those of the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation. The Director of Field Services or a designee may make exceptions only when it is clearly demonstrated that such exceptions are financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.

(b) The agency may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(c) Other agency approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be utilized for clients who are deaf if the total cost of attendance does not exceed the total cost of provision of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation.

(d) Institutional training shall be purchased only from those schools that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all state and federal requirements applicable to their use by the agency.

(e) Training shall be provided only to the entrance level of the vocational objective.

(f) Clients planning to attend a postsecondary institution in Kentucky shall file the Kentucky Financial Aid Form and other need analysis forms as required by the school.

(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An

exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.

(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, attendant care, maintenance, and transportation.

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.

(k) Cost of attendant services for clients in training shall not exceed the cost of attendant services in the agency sponsored attendant care program at the University of Kentucky.

(2) On-the-job training may be provided pursuant to this subsection.

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration.

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration.

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training.

(d) The client in on-the-job training shall be paid the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to the provision of this subsection.

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.

Section 23. Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the agency.

Section 24. Vehicle Purchase. The agency shall not purchase vehicles except when the occupation of the client will require a vehicle as occupational equipment.

Section 25. Visual Impairments. (1) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients with a secondary disability of visual impairment may be served only if another impairment, other than visual, poses the more substantial impediment [~~handicap~~] to employment. The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: November 11, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1992, at 10 a.m. EST in the 9th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 18, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: George Parsons, Division of Program Development, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost 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: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(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 is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Council has advised that the material is restrictive and

is designated by KRS Chapter 13A as regulatory in nature.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This administrative regulation is being amended to increase the minimum allowable production rate for sheltered employment. The increased rate will encourage improved productivity and will promote sheltered employee transition to competitive, integrated employment. Recent changes in federal law permit elimination of language considered discriminatory by people with disabilities. That language is being corrected.

TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards.This administrative regulation details agency standards for the general administration of the Department of Vocational Rehabilitation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to adopt policies and procedures necessary for the administration of the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 20 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients. Recent changes in the federal guidelines for imposition of an order of selection necessitate a similar change in state policies and practices as a condition for continuation of federal funding.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

[~~(5) "CARS" means Comprehensive Accounting and Reporting System.~~]

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability [~~who is handicapped~~];

(f) Telecommunications, sensory, and other technological aids and devices;

(g) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(h) Postemployment services;

(i) Tuition and initial registration fees for training beyond the baccalaureate level;

(j) Interpreter services for individuals who are [~~the~~] deaf except as provided in subsection (2)(f) of this section;

(k) Reader services for individuals who are [~~the~~] blind;

(l) Rehabilitation engineering except as provided in subsection (2)(e) and (f) of this section; and

(m) Other goods and services which can reasonably be expected to benefit an eligible individual [~~who is handicapped~~] in terms of employability.

(2) The following services shall be excluded from an economic needs test:

(a) Diagnosis and evaluation of rehabilitation potential;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Professional rehabilitation engineering services;

(f) Rehabilitation engineering devices necessary for evaluation of rehabilitation potential;

(g) Communication assistance in the individual's native language, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.

(h) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(i) Adjustment training, driver training, on-the-job training; and

(j) Supported employment job coaching.

(3) Except as provided in 781 KAR 1:060, clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess household income to their rehabilitation program:

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants, the agency shall implement the order of selection.

(1) A client previously declared eligible for vocational rehabilitation services shall not be affected when the agency implements an order of selection.

(2) The order of selection shall not be applicable for clients whose needs are for nonpurchased services only (counseling, guidance, placement, referral services, coordination of comparable benefits, or third party payments).

(3) The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated rehabilitation facilities or for services at [~~CARS~~] contracted private not-for-profit rehabilitation facilities.

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals [~~persons~~] with disabilities.

(5) The order of selection shall not regulate the provision or authorization of diagnostic and evaluation services.

(6) All applicants shall be declared eligible or ineligible as appropriate on a timely basis.

(7) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(8) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(9) If the agency is unable to provide services to all eligible clients with severe impediments to employment [~~handicaps~~], eligible individuals with the most severe impediments to employment handicaps shall be served. If the department is unable to identify clients with the most severe impediments [~~handicaps~~], clients with severe impediments to employment [~~handicaps~~] shall be served on a first-applied, first-served basis established by date of application.

(10) Clients with nonsevere disabilities [~~handicaps~~] who are receiving nonpurchased services and who, due to unanticipated events, need purchased services, shall receive the necessary purchased services.

(11) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(12) The order of selection system shall have five (5) priority categories as follows:

(a) Priority I - eligible individuals [~~clients~~] with the most severe impediments to employment [~~handicapping conditions~~].

(b) Priority Category II - eligible individuals [~~clients~~] with a severe impediments to employment [~~handicapping condition~~].

(c) Priority Category III - eligible public safety officers with a nonsevere handicap whose [~~handicapping condition arose from~~] disability sustained in the line of duty.

(d) Priority Category IV - eligible individuals [~~clients~~] with a nonsevere [~~handicap whose~~] disability that results in permanent functional limitations.

(e) Priority Category V - all [~~any~~] other eligible individuals [~~clients~~] whose disability [~~handicap~~] is nonsevere.

SAM SERRAGLIO, Commissioner
APPROVED BY AGENCY: November 11, 1992
FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1992, at 10 a.m. EST in the 9th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 18, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: George Parsons, Division of Program Development, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings. Any savings realized would be redistributed in the form of services to a larger population of citizens with disabilities.

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: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Administrative reporting and tracking costs associated with facilities funding will decrease substantially.

1. First year: Approximately $37,821 will be saved in administrative reporting and tracking costs and travel costs.

2. Continuing costs or savings: The administrative and reporting and tracking costs savings will continue at approximately the same dollar figure with adjustments for inflation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Council has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Pursuant to recommendations by the Rehabilitation Services Administration, input from advocacy groups and pursuant to the need for cost containment, the department will eliminate the current mechanism used to fund community rehabilitation facilities and use the fee for service funding mechanism used to purchase other rehabilitation services. This funding mechanism will allow applicants and clients expanded choices and satisfy the federal mandate. The reference to services provided at Comprehensive Accounting and Reporting System (CARS) funded

facilities is no longer relevant and is being deleted. Services provided at community-based facilities will continue to be exempt from the order of selection. Recent changes in federal law permit elimination of language considered discriminatory by people with disabilities that language is being corrected.

TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details agency standards for and economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:060. Admission and discharge from [~~Colonial Inn Rehabilitation Facility,~~] work training centers and community facilities.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)
STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation establishes criteria for the provision of services by the [~~Colonial Inn Rehabilitation Facility,~~] work training centers, and community facilities.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Department" means Department of Vocational Rehabilitation, and appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

[~~Section 2. Colonial Inn Rehabilitation Facility Admissions. (1) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall meet the following conditions:~~

~~(a) Applicants or clients shall have been determined eligible for rehabilitation services, or eligible for employability evaluation, by the department; and~~

~~(b) Applicants and clients shall continue to be served by Central State Hospital, by Seven Counties Mental Health, or by another public or private vender of mental health services.~~

~~(2) No applicant or client admitted for services at the Colonial Inn Rehabilitation Facility shall be considered a permanent resident of that facility.~~

~~(3) No applicant or client shall be admitted to the Colonial Inn Rehabilitation Facility if any of the following conditions exist:~~

~~(a) The applicant's or client's medical or behavioral condition represents a risk to the health or safety of self or others;~~

~~(b) The applicant or client is unable, for reasons of physical or mental health, to perform routine activities of daily living or to engage in job search activities; or~~

~~(c) The applicant or client is unable to administer medication without assistance.~~

~~(4) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall be assessed for room and board in accordance with the following schedule:~~

~~(a) Those applicants or clients who receive ten (10) dollars or less per week in income shall not be charged for room and board.~~

~~(b) Those applicants or clients who receive more than ten (10) dollars per week in income shall be charged seventy (70) percent of the amount exceeding ten (10) dollars, up to a maximum of twenty-one (21) dollars.~~

~~(5) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall be responsible for the following activities:~~

~~(a) Seeking employment in the local community;~~

~~(b) Continuing treatment with Seven Counties Mental Health or with a private physician or other treatment facility, if further treatment is needed;~~

~~(c) Performing routine activities of daily living; and~~

~~(d) Administering their own medications.~~

~~Section 3. Colonial Inn Rehabilitation Facility Discharges. (1) The following conditions shall be sufficient for discharge from the Colonial Inn Rehabilitation Facility:~~

~~(a) The client or applicant has been charged for room and board, and fails to pay for two (2) consecutive weeks;~~

~~(b) The applicant or client is unwilling or unable to seek employment;~~

~~(c) The applicant's or client's medical or behavioral condition becomes such that it represents a risk to the health or safety of self or others;~~

~~(d) The applicant or client is unwilling or unable to perform routine activities of daily living;~~

~~(e) The applicant or client consistently fails to administer medication responsibly, and efforts to solve the problems are unsuccessful;~~

~~(f) The applicant or client wishes to leave, and cannot be convinced to stay; or~~

~~(g) The applicant or client obtains employment, and is capable of living independently.~~

~~(2) No applicant or client shall be discharged involuntarily from the Colonial Inn Rehabilitation Facility without ten (10) working days notice, unless the applicant or client must be removed from the facility to prevent harm to persons or property or to prevent serious disruption of the facility's program.~~]

Section 2. [~~4.~~] Work Training Centers Admissions and Discharges. (1) Individuals admitted to Department [~~of Vocational Rehabilitation~~] work training centers shall be applicants or clients.

(2) The determination of whether an individual shall be admitted to a work training center shall be made by the designated department

[~~agency~~] staff.

(3) An [~~No~~] applicant or client shall not be admitted to a work training center if there is evidence that the individual's medical or behavioral condition represents a risk to the health or safety of self or others.

(4) The following conditions shall be sufficient for discharge from the department's [~~of Vocational Rehabilitation~~] work training centers:

(a) The applicant or client completes the program goals, and no further services are needed from the work training center;

(b) The applicant's or client's medical or behavioral condition is such that one (1) of the following is true:

1. The applicant or client represents a risk to the health or safety of self or others;

2. The applicant or client is unable to pursue the program goals.

(c) The applicant or client wishes to leave the work training center, and cannot be convinced to stay; or

(d) The client obtains employment.

(5) The department [~~agency~~] staff shall determine when it is appropriate to discharge an applicant or client from a work training center.

(6) An [~~No~~] applicant or client shall not be discharged involuntarily from a work training center without ten (10) working days notice, unless:

(a) Removal of the applicant or client from the work training center is necessary to prevent harm to people [~~persons~~] or property, or to prevent disruption of the center's program.

(b) The mental hospital in which the applicant or client is in residence discharges the applicant or client, and the home area is too distant to allow the work training center program to continue.

Section 3. [~~5.~~] Community Facilities. (1) The department [~~of Vocational Rehabilitation~~] shall utilize existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to individuals with disabilities in accordance with the state plan for rehabilitation facilities.

(2) The department [~~of Vocational Rehabilitation~~] may utilize out-of-state facilities when necessary services are not available in Kentucky.

(3) The department [~~of Vocational Rehabilitation~~] may utilize privately owned and operated facilities. Volume services shall be purchased [~~under a client services agreement~~] solely from facilities which maintain accreditation through the Commission on Accreditation of Rehabilitation Facilities (CARF).

(4) The department [~~agency~~] shall not be obligated to purchase services solely on the basis of accreditation. For occasional purchase of services, CARF accreditation shall not be required; however, the department [~~agency~~] shall seek services that are of comparable quality.

(5) [~~(~~]For [~~occasional~~] purchase of services [~~from facilities not covered by a client services agreement~~], the department [~~agency~~] may set or use an established fee.[~~)~~]

~~(5) The Comprehensive Accounting and Reporting System (CARS) which conforms to the cost principles set forth in the 34 CFR Part 74, Administration of Grants, shall be utilized to determine allowable cost for facilities providing volume services under a client service agreement. A facility entering into such an agreement shall maintain an accounting system with the capacity to identify cost by program and shall make all fiscal and client documents available for audit or examination by the Department of Vocational Rehabilitation.~~]

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: November 11, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1992, at 10 a.m. EST in the 9th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 18, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: George Parsons, Division of Program Development, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Community based rehabilitation facilities and the applicants and clients who use the services of the facilities.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings. Only the funding mechanism is being changed.

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 are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The department will be better able to monitor expenditures for facilities and to direct case service expenditures consistent with applicant and client choices.

(a) Direct and indirect costs or savings: Administrative reporting and tracking costs will decrease substantially.

1. First year: Approximately $37,821 will be saved in administrative reporting and tracking costs and travel costs.

2. Continuing costs or savings: The administrative and reporting and tracking costs savings will continue at approximately the same dollar figure with adjustments for inflation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be fewer reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Council has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Pursuant to recommendations by the Rehabilitation Services Administration, input from advocacy groups and pursuant to the need for cost containment, the department will eliminate the current mechanism used to fund community rehabilitation facilities and use the fee for service funding mechanism used to purchase other rehabilitation services. This funding mechanism will allow applicants and clients expanded choices and satisfy the federal mandate. Services provided at community based facilities will continue to be exempt from the order of selection. Recent changes in federal law permit elimination of language considered discriminatory by people with disabilities that language is

being corrected. References to the Colonial Inn Rehabilitation Facility are being deleted because that facility is no longer in operation.

TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation establishes standards for admission to and discharge from agency operated facilities.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to adopt such policies and procedures as is necessary for the administration of the Department of Vocational Rehabilitation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery at state operated facilities.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Proposed Amendment)

803 KAR 25:011. Procedure for adjustments of claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board.

Section 1. Definitions. (1) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(2) "Commissioner" means the individual employed by the board pursuant to KRS 342.230(2).

(3) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(4) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(5) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(6) "Date of filing" means the date a pleading, motion, or other document is received by the board at its office in Frankfort, Kentucky.

Section 2. Parties. (1) The parties to any application for adjustment of claim filed with the board pursuant to KRS 342.270 shall be designated as "plaintiff" and "defendant." The party filing the original application in such proceedings shall be designated as the "plaintiff" and the adverse party (parties) as "defendant" ("defendants").

(2) All parties shall join as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any such person should refuse to join as a plaintiff, he shall then be joined as a defendant, and the fact of his refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. The administrative law judge to whom the matter is assigned may order upon a proper showing that any additional party be joined when the administrative law judge deems the presence of the party necessary or that any party be dismissed when the administrative law judge deems the presence of the party unnecessary.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120.

(c) Additional parties may be joined upon motion made as soon as practicable after legal grounds for joinder are known. The administrative law judge may, in his discretion, overrule any motion for joinder which is untimely made. Upon joinder of an additional party, a copy of the file shall be served on the party joined as ordered by the administrative law judge. Upon order of the administrative law judge, the commissioner shall provide notice of the joinder to the party joined.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, or other pleading shall be typewritten, and the printed forms prescribed by the board shall be used whenever applicable. All forms shall be furnished by the commissioner to any person who requests them, without charge.

(2) The original application for adjustment of claim shall be fully completed and filed in triplicate with the commissioner. The original and sufficient copies for serving all named parties and the administrative law judge shall be furnished. The commissioner shall serve the application upon all named parties other than the plaintiff by first class mail. The commissioner shall return unfiled to the plaintiff or his attorney any application which is not fully completed or which does not have attached all forms required to be filed with the application. If the application is resubmitted in proper form within twenty (20) days of the date it was returned by the commissioner, the filing date shall relate back to the date the application was first received by the commissioner. Otherwise, the second date of receipt shall be the filing date.

(3) All pleadings filed with the commissioner subsequent to the original application shall include the certificate of the party or attorney who filed the pleading stating the date and manner of service of a copy of the pleading upon the other parties. Service of these pleadings shall be made in one of the ways provided by Rule 5.02, Kentucky Rules of Civil Procedure. Copies of all pleadings filed after the application has been assigned to an administrative law judge and the parties have received notice of the assignment shall also be served upon the administrative law judge at his office address, and the certificate of service shall so show. Service of all pleadings and transcripts of proof by deposition upon the administrative law judge and the commissioner is required.

Section 4. Motions. (1) Every application for an order of the administrative law judge shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation. The party filing a motion shall tender with the motion a proposed order granting the relief requested by the motion.

(2) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(3) Every motion, the grounds of which depend upon the existence of facts not appearing in evidence at the time of the filing of the motion, shall be supported by affidavits evidencing such facts, which shall be served and filed with the motion. Contrary affidavits may likewise be served and filed by the opposing party.

(4) Every motion, the grounds of which depend upon the existence of one (1) or more facts which the movant contends are

shown in evidence or are admitted by the pleading of the adverse party, shall contain a reference to the hearing transcript, deposition transcript, or medical report containing the evidence and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion may be considered by an administrative law judge ten (10) days after the date of filing of the motion. A response to a motion will be considered if filed prior to the tenth day after the date of filing of the motion.

(6) Every motion for the allowance of an attorney's fee shall be served upon the adverse party and also upon the attorney's client and the fact of such service certified as provided in Section 3(3) of this regulation. Every motion for the allowance of an attorney's fee shall set forth the amount of money requested and the percentage of the award represented by the fee. Every motion shall be accompanied by an affidavit of the attorney setting forth in detail the services rendered and the amount of time expended. Every motion shall also be accompanied by a completed Form 109 signed by the attorney and his client, and notarized, as required by KRS 342.320(3). Every motion for allowance of an attorney's fee shall be submitted within thirty (30) days following finality of the last appealable order of the administrative law judge.

Section 5. Application for Adjustment of an Injury Claim. (1) The original application for adjustment of injury claim (Form 101) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) One (1) medical report describing the injury which is the basis of the claim; and

(d) A signed waiver and consent to release relevant medical information in compliance with KRS 342.020(4) (Form 106).

The medical report required to be filed under paragraph (c) of this subsection may consist of the notes of a treating physician and other materials provided by the physician so long as the notes and materials are legible. Medical reports presented in this form and not on Form 107 shall not be considered as the direct testimony of a physician through a medical report pursuant to KRS 342.033, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(2) A defendant may file an answer to the plaintiff's application for adjustment of an injury claim (Form 101) within twenty (20) days after the date of service upon him of the application, but no such answer is required. If none is filed, all of the allegations of the application will be deemed to be denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied by the answer shall be deemed to be in disagreement.

(3) If any defendant in an application for adjustment of injury claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within twenty (20) days after the date of issuance of the scheduling order by the Department of Workers' Claims, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon the issuance of a scheduling order by the Department of Workers' Claims, all parties may begin discovery and proof. All parties may take discovery and proof before or within sixty (60) days from the date of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; thereafter, the plaintiffs may take rebuttal discovery and proof for an additional fifteen (15) days.

All parties shall be furnished with copies of all medical reports and vocational evaluation reports within thirty (30) days of the examination or evaluation by the party requesting the examination or evaluation.

(5) Within thirty (30) days after an application for adjustment of an injury claim is filed, the commissioner shall assign the case to an administrative law judge and schedule the time and place for the prehearing conference. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference. All parties shall be notified of the assignment and schedule by the commissioner.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) The original application for adjustment of an occupational disease claim (Form 102) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106);

(d) Two (2) written medical reports supporting the claim (Form 108) in compliance with KRS 342.316(2)(b)1.

(2) Within sixty (60) days after the date of service upon him of an application for adjustment of an occupational disease claim (Form 102), unless for good cause shown the administrative law judge has granted an extension of time, each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for adjustment of an occupational disease claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when retraining incentive benefits are sought.

(4) Upon being served with an application for adjustment of an occupational disease claim pursuant to KRS 342.316(2)(6)1a or KRS 342.732 (Form 102), a defendant may have the plaintiff examined by medical experts and evaluated by vocational experts, at the defendant's expense. All parties shall be furnished with copies of all medical reports and vocational evaluations within thirty (30) days of the date of the examination or evaluation and within the sixty (60) day discovery time. During this sixty (60) day discovery time, the defendants may depose the plaintiff for discovery purposes. If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist an application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the prehearing conference, and at the same time issue a schedule for the taking of discovery and of proof by deposition prior to the prehearing conference. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiffs may take discovery and proof for an additional fifteen (15) days. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for

transcripts of proof by deposition to be filed prior to the prehearing conference.

(5) When an application for adjustment of an occupational disease claim (Form 102) is filed and one (1) or more of the medical reports filed with the application pursuant to KRS 342.316 contains the findings of more than one (1) physician, the findings of one (1) physician concerning the x-ray examination, one (1) physician concerning the spirometric testing, and one (1) physician concerning the comprehensive clinical examination shall together constitute one (1) "written medical report", and cross-examination by deposition may be taken of all the three (3) physicians contributing to any "written medical report" and be introduced as the "direct testimony" of one (1) physician for the purposes of KRS 342.033. Up to three (3) "written medical reports" may be introduced by any party to an occupational disease claim or application for retraining incentive benefits without prior consent from the administrative law judge, as required by KRS 342.033.

Section 7. Application for Retraining Incentive Benefits. (1) The original application for retraining incentive benefits (Form 103) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106) in compliance with KRS 342.020(4);

(d) Two (2) x-ray reports complying with KRS 342.316.

(2) Within sixty (60) days after the date of service upon him of an application for retraining incentive benefits (Form 103), each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for retraining incentive benefits date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when rehabilitation incentive benefits are sought.

(4) If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist the application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the hearing, and at the same time shall issue a schedule for the taking of proof. During this proof-taking time, direct testimony may be taken from the physicians who conducted the examination, and proof may be taken by deposition concerning any special defenses pleaded by the employer at the time of filing of the notice of election to resist. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiff may take discovery and proof for an additional fifteen (15) days. The hearing shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the hearing.

Section 8. Prehearing Conference. (1) The purposes of the prehearing conference are to expedite the processing of contested cases and to avoid whenever possible the need for a formal hearing. The conference is an informal procedure, presided over by the administrative law judge. No transcript of the proceedings of the conference shall be made. At the conference, every effort shall be made by all parties to dispose of controversies whenever possible, to narrow and define issues, and to facilitate prompt settlement of the claim. The parties shall exchange lists of known witnesses fifteen (15) days before the prehearing conference and final additions, if any, to the respective witness lists shall be made at least seven (7) days before the prehearing conference. The witness list shall give the name of each proposed witness together with a summary of the prior testimony or anticipated testimony of the witness. For medical witnesses, this summary shall include at a minimum a description of the diagnosis made by the witness and the physical findings and diagnostic studies upon which the diagnosis is based, as well as the functional impairment rating assessed by the witness and any work-related restrictions imposed.

(2) Within sixty (60) days after the date of the commissioner's scheduling order, the defendant employer shall file with the administrative law judge, with copies to opposing parties, the plaintiff's payroll records with the defendant employer for each of the fifty-two (52) weeks preceding the date of the alleged injury or the date of the alleged last exposure in accordance with the provisions of KRS 342.140 unless good cause is shown for the failure to file the payroll records or the parties, by joint stipulation, agree upon the employee's average weekly wage. Such payroll records or stipulation shall constitute evidence in the case.

(3) At the prehearing conference, the administrative law judge may limit witnesses for good cause shown.

(4) The plaintiff and his representative, the defendant employer/insurer or its representative, and the representatives of all other parties shall attend the prehearing conference. The representative of any party must have authority to resolve disputed issues and settle the claim at the conference. The administrative law judge may upon motion waive the requirement that the plaintiff shall attend the conference but only for good cause shown in the motion and with a showing that the plaintiff's representative will attend the conference with full authority to settle the claim.

(5) The representative of a party may seek rescheduling or postponement of a prehearing conference by motion filed at least fifteen (15) days prior to the schedule date of the conference, stating the reason for the request. A motion to postpone or reschedule shall be sustained only upon good cause shown at the discretion of the administrative law judge.

(6) If all parties agree upon a settlement prior to the prehearing conference, the settlement agreement shall be filed for the approval of the administrative law judge. If the agreement is approved by the administrative law judge, the prehearing conference shall be cancelled and notice of the cancellation served on all parties.

(7) If at the conclusion of the conference the parties have not reached agreement on all the issues, the administrative law judge shall prepare a stipulated summary of all contested and uncontested issues, which shall be signed by representatives of the parties and by the administrative law judge. This stipulation shall be filed, and only the contested issues shall be the subject of further proceedings before the administrative law judge.

(8) In the sole discretion of the administrative law judge upon motion of a party with good cause shown, the administrative law judge may order that additional discovery or proof by deposition be taken on a contested issue between the prehearing conference and the hearing. Taking of this proof shall not automatically be a valid reason for continuing the date for the hearing.

(9) If the claim is not settled, the administrative law judge shall schedule a date for the hearing on the claim at the prehearing conference. The date for the hearing shall be within sixty (60) days from the date of the prehearing conference. Representatives of the parties shall come to the prehearing conference prepared to schedule a hearing during the conference. The hearing date will not be

changed except for good cause shown on motion of the representative requesting the change.

(10) If the parties agree upon a settlement at or after the prehearing conference but before the hearing, the settlement agreement (Form 110) shall be filed for the approval of the administrative law judge. The administrative law judge shall approve or disapprove the settlement agreement within ten (10) days of filing. If the agreement is approved by the administrative law judge, the hearing shall be cancelled and notice of the cancellation served on all parties.

Section 9. Interlocutory Relief. (1) The plaintiff may seek three (3) forms of interlocutory relief while his claim is in the process of consideration for adjustment.

(a) If the plaintiff is totally disabled, he may seek to have income benefits paid pursuant to KRS 342.730 while the claim is pending.

(b) He may seek to have medical and hospital bills paid pursuant to KRS 342.020 while the claim is pending.

(c) He may seek provision of rehabilitation services pursuant to KRS 342.710 while the claim is pending. The defendants may also request rehabilitation services for the plaintiff while the claim is pending.

(2) The plaintiff may seek one (1) or more forms of interlocutory relief by completing the appropriate section of the application for adjustment of claim. The plaintiff or defendants may seek interlocutory relief by motion if the need for interlocutory relief arises after the application is filed.

(3) If the plaintiff seeks interlocutory relief in his application for adjustment of claim or by motion at least twenty (20) days prior to the prehearing conference or if there is agreement of all parties, the request for interlocutory relief may be considered at or before the prehearing conference. If the motion is filed within twenty (20) days of the prehearing conference or after the prehearing conference but before the hearing, it may be considered at or before the hearing.

(4) One (1) or more of the forms of interlocutory relief described in Section 9(1) of this regulation may be granted by the administrative law judge if the plaintiff shows by means of affidavits, his own deposition, or other evidence of record that he is eligible for the interlocutory remedies being sought under KRS Chapter 342 and that if he does not receive the interlocutory relief sought he will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application. A defendant may be granted the right to provide rehabilitation services to the plaintiff while the claim is pending upon a showing that the plaintiff will benefit from the services and have a better chance of returning to work as a result.

(5) When the plaintiff seeks interlocutory relief, the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days from the date of the issuance of the scheduling order by the Department of Workers' Claims, or within twenty (20) days of the filing of any subsequent motion.

(6) When the plaintiff seeks interlocutory relief, the administrative law judge shall review all pleadings, affidavits, and other evidence in the record and at the prehearing conference or hearing may, in his discretion, hear oral arguments in support of each party's position. The administrative law judge shall render his decision, file it in the record, and serve it on all parties.

(7) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, the application shall be placed in abeyance, unless the plaintiff shows that he will be irreparably harmed thereby. While the application is in abeyance, the parties shall submit in writing to the administrative law judge a report on the plaintiff's continued total disability every sixty (60) days. If, in the administrative law judge's discretion, new evidence shows that the plaintiff is no longer totally disabled, the administrative law judge may revoke the interlocutory payment of income benefits based on total disability and remove the claim from abeyance.

(8) No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits.

(9) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, an attorney's fee in the amounts authorized by KRS 342.320 but in no case to exceed twenty (20) percent of the weekly income benefit awarded may be ordered by the administrative law judge upon motion of the attorney. The administrative law judge may award the fee on a sixty (60) day basis, renewable for additional sixty (60) day periods if the interlocutory benefit is renewed pursuant to Section 9(7) of this regulation. All provisions of KRS 342.320 and Section 4(6) of this regulation must be complied with. The fee awarded shall be deducted in equal amounts from the weekly income benefits awarded and paid directly to the attorney awarded the fee at the beginning of each sixty (60) day period.

Section 10. Hearings. (1) If the parties have not arrived at a settlement prior to the scheduled hearing date, a hearing shall be held to complete proof on all contested issues set forth in the stipulated summary filed pursuant to Section 7(8) of this regulation.

(2) The administrative law judge to whom the case has been assigned shall conduct the hearing. No proof shall be taken following the hearing.

(3) The plaintiff shall appear at the hearing and shall present his testimony concerning the contested issues still before the administrative law judge, even if the plaintiff's testimony has previously been taken by deposition. Defendants may cross-examine. Other proof may be taken at the hearing only if it has not previously been taken by deposition.

(4) If the plaintiff fails to appear at the hearing of his claim and no good cause is shown for his failure to appear, the administrative law judge may dismiss the case for want of prosecution. If good cause is shown, the case may be continued until the plaintiff is able to appear.

(5) When a defendant or his representative fails to appear at the hearing, the hearing may proceed as scheduled.

(6)(a) At the conclusion of the hearing, the administrative law judge may take the application under submission immediately or request briefs from the parties to be filed according to a schedule announced by the administrative law judge at the hearing. Upon filing of the last brief scheduled or passage of the due date for that brief, the case shall stand submitted. Briefs filed with the administrative law judges shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages in length. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. The administrative law judge may announce his decision at the conclusion of the hearing and subsequently file his written opinion, serving it on the parties when filed, or the administrative law judge may defer his decision until he files the written opinion. In either case, a decision shall be rendered no later than ninety (90) days following the hearing, and the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

(b) A persistent or continuous failure to comply with paragraph (a) of this subsection may be considered by the board as cause for removal of the administrative law judge pursuant to KRS 342.230.

Section 11. Petitions for Reconsideration. (1) Within fourteen (14) days from the date the written opinion announcing an order, award, or decision is filed, any party may file a petition for reconsideration of the award, order, or decision. The petition shall clearly identify the error "patently appearing upon the face" of the award, order, or decision which the petitioner seeks to have corrected and set forth arguments and authorities supporting the correction sought.

(2) Any party may file a response to the petition within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall by order overrule or sustain the petition for reconsideration within ten (10) days after the date the responses are due.

(4) If the administrative law judge finds that the petition is frivolous, he may assess costs and attorney fees against the petitioner or his attorney.

(5) The filing of a timely petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon. Any notice of appeal filed prior to filing of a petition for reconsideration shall be held in abeyance until a ruling is made on the petition.

Section 12. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a written opinion, order or decision finally adjudicating a case, a party aggrieved by the opinion, order, or decision may appeal the opinion, order, or decision to the Workers' Compensation Board. Opinions, orders, or decisions of administrative law judges and of the (old) Workers' Compensation Board established pursuant to KRS 342.215(5) shall be appealed in this manner. A final adjudication as used in this section shall be determined according to the provisions of Civil Rule 54.02(1) and (2).

(2) The appeal shall be initiated by the filing of a notice of appeal. The notice of appeal shall style the appealing party first as the "petitioner" and all other parties against whom the appeal is being taken as the "respondents." The Workers' Compensation Board case number shall be retained in the petition and in all other pleadings related to the appeal to the board. The administrative law judge who rendered the opinion, order or decision appealed from or the (old) Workers' Compensation Board shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b).

(3) Any party other than the petitioner in the appeal may file a cross-appeal. All cross-appeals shall be filed by notice of cross-appeal within ten (10) days after notice of appeal is served. If a cross-appeal is filed, the style of the appealed and cross-appealed case shall designate the parties as appropriate (i.e., petitioner-cross-respondent). The Workers' Compensation Board number shall remain the same.

(4) The notice of appeal or cross-appeal, and enough copies for service on all respondents, shall be filed with the commissioner. The commissioner shall cause all respondents to be served by first class mail with a copy of the notice of appeal or cross-appeal. All subsequent pleadings shall be served on the respondents as provided in Section 3(3) of this regulation.

(5) When a notice of appeal is filed, the record in the case shall be transferred to the Workers' Compensation Board in its entirety, unpaginated. All references to specific evidence in the record shall be by the title of the evidence referenced and the page number at which the specific entry occurs (i.e., Deposition of Dr. A. B., p. 17.)

(6) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue before the board. All testimony concerning the issue shall be transcribed and placed in the record, and notice of filing of the transcript shall be given to all parties by the commissioner. All subsequent time in such a case shall be calculated from the date the transcript is filed instead of the date of filing of the notice of appeal.

(7)(a) The petitioner's brief shall be filed with the board within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Rule 76.12(4)(c) of the Kentucky Rules of Civil Procedure except that no index shall be required and the only appendix shall be a copy of the decision appealed from, including the decision of the administrative law judge, all petitions for reconsideration of the opinion, all rulings on petitions for reconsideration, and copies of all cited cases from federal courts and foreign jurisdictions.

(b) The failure of the petitioner to file petitioner's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of good cause:

1. A dismissal of the appeal after failure to respond to a show cause order served upon the attorney and client;

2. The striking of the petitioner's brief;

3. The imposition of a fine on petitioner's counsel of not more than $500.

(8)(a) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed or due. The organization and contents of the respondent's brief shall be as provided in Rule 76.12(4)(d) of the Kentucky Rules of Civil Procedure, except that no index shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration and copies of all cited cases from federal courts and foreign jurisdictions. If a respondent is also a cross-petitioner, a combined brief shall be filed addressing issues raised by the petitioner's brief and by the cross-appeal.

(b) The failure of the respondent to file respondent's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of good cause:

1. The reversal of the opinion and award if the petitioner's brief and the record reasonably appear to sustain such action;

2. The striking of the respondent's brief;

3. The imposition of a fine on respondent's counsel of not more than $500.

(9) The petitioner's reply brief may be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall be filed addressing issues raised by the response and issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required.

(11) The petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each in overall length. Reply briefs shall be limited to five (5) pages in overall length. Combined briefs shall be limited to twenty (20) pages each in overall length. The requirements of this rule with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. All pleadings shall be typewritten and conform to the requirements set forth in Rule 7.02(4) of the Kentucky Rules of Civil Procedure. Pleadings shall be filed without covers, but the style of the case, including the board number and the title of the pleading, shall appear on the first page of the pleading.

(12) When all briefs have been filed or the due date is past on the last brief due, any party may by motion move for submission of the appeal to the board for decision. Upon issuance of the board's order, the case shall stand submitted.

(13) Within thirty (30) days of the filing of the board's order of submission, the board shall enter its decision affirming, modifying, or setting aside the decision, order, or award appealed from, or, in its discretion, remand the claim to the administrative law judge for further proceedings in conformity with the direction of the board. There shall be no motion for reconsideration.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Rule 76.25, Kentucky Rules of Civil Procedure.

(15) Every application for an order of the board shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(16) When a motion is filed, the party may file with it a short

memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(17) All motions filed with the board subsequent to the original notice of appeal shall include the certificate of the party or attorney who filed the motion stating the date and manner of service of a copy of the motion upon the other parties. Service of these motions shall be made in one of the ways provided in Rule 5.02, Kentucky Rules of Civil Procedure.

(18) The opposing party may file a response, accompanied by a certificate of service, within ten (10) days after the date the motion was filed with the board.

(19) Except for motions that call for final disposition of an appeal before the board, any member of the board designated by the chairman may dispose of any motion; and any intermediate order of a procedural nature pending final disposition of a proceeding pending before the board may be issued on the signature of any member of the board.

Section 13. Medical Reports. (1) As provided in KRS 342.033, any party may introduce direct testimony (proof) from a physician through a written medical report, subject to the limitations of KRS 342.033, Section 5(3) of this regulation, and the scheduling order issued by the commissioner pursuant to Section 5 of this regulation.

(2) Any written medical report sought to be introduced as evidence shall be submitted on a Form 107 (injury) or Form 108 (occupational disease) whichever is appropriate, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(3) Any written medical report sought to be introduced as evidence shall be signed by the physician making the report, bearing an original signature. A reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report.

(4) Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, this section may be complied with by a statement of the physician's medical qualifications index number on the record in lieu of attaching a statement of the physician's qualifications.

(5) Any narrative in a written medical report on a Form 107 or Form 108 sought to be introduced into evidence shall be typewritten. Any written medical report or any attachment to a written medical report, such as spirometric tracings, shall be clearly legible in the original and on the copies served on other parties.

(6) The written medical reports required by KRS 342.316(2)(b)1a shall be filed with the application for adjustment of an occupational disease claim as required by that section but shall not be considered evidence unless a motion for that purpose is made.

(7) Any party may file, with notice to the other parties, the testimony of three (3) physicians, taken either by deposition or medical report, which shall be admitted into evidence without further order. If any party objects to the admissibility of the evidence, the administrative law judge shall then rule on its admissibility.

(8) All other written medical reports shall be introduced by motion for admission. The written medical report shall be attached to the motion. The party seeking admission of the report may also file a memorandum in support of the motion. The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(9) Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the report or the motion for admission. Grounds for the objection shall be stated with particularity. The objecting party may file a memorandum in support of his objection.

(10) If a written medical report is admitted as direct testimony, any adverse party may depose the physician making the written report as cross-examination concerning it, and the deposition shall be filed as proof without a motion.

Section 14. Continuances, Extensions, and Motions to Hold in Abeyance. (1) Continuances of hearings and prehearing conferences may be granted by the administrative law judge upon motion supported by affidavits stating facts making a proper showing of good cause for a continuance. A motion for a continuance must be filed no later than twenty (20) days prior to the conference or hearing unless there is a showing of emergency or circumstances beyond the control of the requesting party which prohibited timely filing of the motion. The opposing parties may have ten (10) days from the filing date of the motion to respond with a brief memorandum with affidavits in support of their position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon showing of circumstances preventing the party moving for an extension from timely taking discovery or proof by deposition. The motion for extension of time must be filed no later than five (5) days before the deadline sought to be extended. The motion for extension of time and supporting affidavits must clearly set forth the following:

(a) A showing of timely and diligent efforts by counsel to take the discovery or proof by deposition in question must be detailed.

(b) The facts which prevent taking of the needed discovery or proof by deposition must be detailed.

(c) The date of availability of the evidence needed and the probability of its production must be detailed.

(d) Where possible, supporting documentation giving rise to the need for the extension should be filed with the motion.

(3) In the absence of unusual circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(4) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff or to all defendants should an extension be granted to a defendant.

(5) The provisions of this section shall apply to motions requesting that a claim be held in abeyance pending settlement or for any other reason.

Section 15. Stipulation of Facts and Judicial Notice. (1) Stipulation of facts which are not in issue is mandatory, and the refusal without good cause to stipulate facts which are not in issue, within the sound discretion of the administrative law judge, may result in assessment of costs against the party who without good cause has refused to stipulate to routine matters not in issue. The assertion of the fact that a party has not had sufficient time or opportunity to ascertain the facts will not be necessarily considered "good cause" within the meaning of this regulation.

(2) Every party to a stipulation shall be considered bound to the same. For good cause shown, however, any party may be relieved of a stipulation he has made provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing. Upon granting relief from a stipulation, the administrative law judge shall grant a continuation of the hearing and shall schedule additional discovery or proof time for the opposing party or parties to complete their discovery or proof so as to prevent prejudice or surprise.

(3) At the prehearing conference, the administrative law judge shall ask the appropriate questions in order to determine the reasons for an inability or unwillingness to stipulate. The plaintiff and the defendants have the joint responsibility of resolving jurisdictional

issues and preaward payment of compensation and explaining why these cannot be stipulated.

(4) The administrative law judge will take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(5) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should the employer or any other person against whom a claim is filed not have insurance coverage or qualify as a self-insurer, the commissioner within thirty (30) days after the filing of the claim shall certify to the file that the defendant or any other person against whom a claim has been filed has failed to secure payment of compensation as required by KRS Chapter 342 and shall notify the administrative law judge and all parties by service of a copy of the certification of no coverage.

Section 16. Evidence: Rules Applicable. (1) The same rules of evidence that apply in judicial proceedings and that are governed by the common law and the statutes in effect in this Commonwealth apply in all hearings and depositions taken to be used in cases before the administrative law judges.

(2) An exception to the above rule applies in medical reports submitted by and depositions taken of evaluating physicians who are nontreating physicians. In those instances, the nontreating physician is permitted to use the case history related to him by the patient and the subjective symptomatology related to him by the patient in arriving at and formulating his opinion as to causation and disability.

Section 17. Discovery and Depositions. (1) The parties may obtain discovery and take depositions in accordance with the provisions of Rules 26 to 37, inclusive, of the Kentucky Rules of Civil Procedure, except for Rules 27, 33, and 36 which are not adopted by the board and which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given and provided the notice of deposition contains the following information:

(a) That the deposition is being taken by telephone;

(b) The address and telephone number from which the telephone call will be placed to the witness;

(c) The address where the witness will be giving the deposition and the number of the telephone on which the witness will receive the deposition call; and

(d) That all opposing parties may appear to participate at the deposition either at the place from which the deposition is being given by the witness or at the place the telephone call is placed to the witness.

(3) After a party has served notice of its intention to take a deposition by telephone, any opposing party may participate in the deposition for cross-examination by conference call from places other than where the deposition is given by the witness or where the call is placed to the witness but must contribute its proportionate cost of the conference telephone call.

(4) The commissioner shall establish a medical qualifications index, and an index number will be assigned to a physician upon the filing by the physician of his qualifications. Any physician who has been assigned an index number may testify to the assigned number at deposition in lieu of stating his qualifications. Previously filed medical qualifications may be revised or updated by submitting such revision to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of the physician at the deposition.

Section 18. Appearances. (1) Only attorneys-at-law duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself only but shall not, either directly or indirectly, represent or appear in behalf of any legal entity other than himself, except as provided in subsection (2) of this section.

(2) If no prior application for adjustment of claim has beenfiled in any dispute involving KRS 342.020 or 342.035, any provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, insurance adjuster, or surety for employer may contest the same without representation by an attorney through the appearance of a person who is an officer of or regularly employed in a managerial capacity by a corporation or partnership which is involved in the dispute.

(3) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel.

(4) Every pleading shall be signed by the person filing the pleading together with his full address and telephone number(s).

Section 19. Withdrawal of Records. (1) No paper or other portion of any original record of the board shall be withdrawn except on order of the administrative law judge.

(2) All physical exhibits, including x-rays, will be disposed of sixty (60) days after the case is finally closed, unless the filing party makes arrangements to claim the exhibit prior to that time. If the unclaimed exhibit has no money value, it will be destroyed; if the unclaimed exhibit has a value of more than $100, it will be sold as surplus property; the unclaimed exhibit will be donated to an appropriate state agency if it has a value of less than $100; if the unclaimed exhibit has historic or museum value, it will be sent to the state archives.

Section 20. Routine Records Admission. Any party may file in the record of a case any routine hospital, armed forces and Social Security records. These shall be made part of the record and considered for their statistical content only, and any opinion contained therein shall be stricken and not considered. A party, however, may depose the proper agent in the manner provided in these regulations in order to have these records admitted as to any opinion contained therein.

Section 21. Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this regulation by reference.

Section 22. Retraining Incentive Benefits. If an applicant for retraining incentive benefits is working in the coal industry at the time his application is filed, the insurance company responsible is the one insuring the applicant's employer on the date of the filing. Otherwise, the insurance company responsible is the one insuring the applicant's employer on the date of his last exposure.

Section 23. Forms. (1) Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] is filed herewith and incorporated by reference.

(3) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor-The Meyer Building, 624 West Main

Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 24. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation which has been awarded a claimant in the case where the defendant-employer, or any other party liable for the payment thereof, has not secured payment of compensation as provided for by KRS Chapter 342 shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the defendant-employer, or any other person liable for payment of the action, judgment has been rendered thereon, and there has been default in payment of the judgment by the defendant-employer, or any other party liable for payment thereof, except the uninsured employers' fund.

(2) When the procedure provided in subsection (1) of this section has been complied with, the claimant may file a motion with the administrative law judge, together with proof of compliance with the requirement of subsection (1) of this section, requesting that the administrative law judge order payment from the uninsured employers' fund in accordance with KRS 342.760. Upon satisfactory proof of such compliance, the administrative law judge shall enter an order directing payment of compensation or any portion thereof from the uninsured employers' fund.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim or award approved by the board pursuant to KRS 342.265, or the payment of its proportionate share of a claim or award by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from the defendant-employer upon a showing that the defendant-employer has filed a petition in bankruptcy in the United States Bankruptcy Court under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) The predicted normal values of FVC and FEV_1, which are identical in both the 1984 and 1988 editions of the American Medical Association Guidelines, are given in graph form with ages and heights given in even years and even centimeters. The guidelines are silent as to the determination of the proper predicted values when the plaintiff's age is in an odd year or his height is in odd centimeters.

(2) If the plaintiff's age at the time of the exam is an odd year, the next highest even year shall be used.

(3) The plaintiff's height, as measured in his stocking feet, shall be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

~~[Section 26. Resolution of Medical Fee Disputes. (1) Any employee, provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, or surety for employer, whether a natural person, partnership, or corporation, may seek, by request (Form 112), resolution of a dispute regarding the payment or nonpayment of medical expenses before an application for adjustment of claim is filed.~~

~~(2) The movant shall file with his request affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought. The opposing party may file, within twenty (20) days after notice of the request a response, if any, along with affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought.~~

~~(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.~~

~~(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has so brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.~~

~~(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of this regulation.]~~

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: October 26, 1992

FILED WITH LRC: November 13, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on December 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Employers, employees, insurers, and providers of medical services involved in workers' compensation medical fee disputes. It is estimated that 700 of these disputes are filed in a year.

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

1. First year: None. Section 26, Resolution of Medical Fee Disputes, and Form 112 have been deleted from this regulation so that a separate regulation on the topic of medical fee disputes may be promulgated in compliance with KRS 13A.221.

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: Amendments to Section 26 were planned, but KRS 13A.221 indicates that a separate regulation on the subject of medical fee disputes should be promulgated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Section 26 and Form 112 have been deleted from this regulation for revision and promulgation in a separate regulation in compliance with KRS 13A.221.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.180, 214.020, 214.610

STATUTORY AUTHORITY: KRS 194.050, 211.090

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

Section 1. Definitions. [~~(1)~~] "Continuing licensure" means the renewal of an existing license as part of the periodic renewal cycle adopted by the respective licensure board.

[~~(2) "National accrediting body" means a council or commission which examines specific curricula or courses and certifies that they are adequate for the granting of continuing education credit.~~]

Section 2. The educational course approved by the cabinet for continuing education shall be either of the following:

(1) Any one of those courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. 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 [~~AIDS/~~] HIV education program, [~~or~~] course, class, seminar given by a provider that [~~having received approval of a national accrediting body;~~

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

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

Section 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 shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses designed to be given in person.

Section 6. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more license boards, or a licensure board so requests, CHR may inspect that course and may remove it from the approved list if it does not meet quality standards of this regulation.

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

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

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

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

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

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 11, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on December 22, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by December 17, 1992, of their desire to appear and testify: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Finger

(1) Type and number of entities affected: Boards of licensure for 11 health professions.

(a) Direct and indirect costs or savings to those affected: No cost or savings will accrue due to this action.

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: Does not effect reporting requirements of original regulation.

(2) Effects on the promulgating administrative body: Does not change cabinet responsibility.

(a) Direct and indirect costs or savings: The staff time to prepare amendment and promulgating regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method available.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This action does not change effect on licensure board or licensees.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

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

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g [~~Cabinet for Human Resources, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Vol. II, p. 261~~]

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

Section 1. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the SSI payment and other income for the current month.

(2) Recipients include [~~Also included are those~~] former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December level.

(4) [~~(1)~~] The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

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

Section 2. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 3, 4 and 5 of this administrative regulation, meets [~~those persons meeting~~] technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires [~~(except when specified in 904 KAR 2:015) who require~~] special living arrangements; and

(c) Has [~~who have~~] insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home as defined in 902 KAR 20:036;

(b) Residence in a [~~or~~] family care home as defined in 902 KAR 20:041; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the following persons living with the applicant:

(a) The spouse;

(b) Parent [~~(~~]of an adult disabled child or a minor child[~~)~~]; or

(c) Adult child [~~(~~]of an aged or disabled parent. [~~) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI.~~]

(4) If potential eligibility exists, application for SSI is mandatory.

Section 3. Resource[s] Consideration[s]. [~~In determining countable resources and the effect of resources on eligibility, the following policies are applied.~~]

(1) Except as stated in subsection (2) of this section, countable [~~Consider~~] resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004[~~, except as noted in subsection (2) of this section~~].

(2) The individual or couple is not eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple. [~~The upper limit for resources for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively,~~

~~effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989.~~

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

Section 4. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, [~~Establish the amount of~~] income is considered according to policies for the medically needy in 907 KAR 1:004.

(2) The [~~In determining the amount of~~] optional supplementation payment is determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) [~~, including any~~] Payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection [~~, is deducted~~] from the standard of need in Section 5 of this regulation.

(3) [~~With the following exceptions:~~

~~(1)~~] Income of the ineligible spouse is:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved [~~for the needs of the ineligible, non-SSI spouse or minor dependent children~~] in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child. [~~each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse.~~]

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. [~~When conserving for the needs of the minor dependent children,~~]

(5) Income of the child [~~children~~] shall be [~~appropriately~~] considered when conserving for the needs of the minor dependent child so [~~that~~] the amount conserved does not exceed the allowable amount. [~~When the eligible individual and spouse each have earnings,~~]

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

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

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

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

(a) For an eligibility determination[~~s~~] for personal care homes made on or after January 1, 1992[~~: not less than~~] $720;

(b) For an eligibility determination[~~s~~] for family care homes made on or after January 1, 1992[~~: not less than~~] $525;

(c) Caretaker.

1. For an eligibility determination[~~s~~] for a single individual, or an eligible individual with an ineligible spouse [~~(one~~] who is not aged, blind, or disabled[~~)~~] made on or after January 1, 1992[~~: not less than~~] $445;

2. For an eligibility determination[~~s~~] for an eligible [~~married~~] couple, both [~~eligible (~~]aged, blind, or disabled and [~~), with~~] one (1) requiring care made on or after January 1, 1992[~~: not less than~~] $661;

3. For an eligibility determination[~~s~~] for an eligible [~~married~~] couple, both aged, blind or disabled [~~eligible~~] and both requiring care made on or after January 1, 1992[~~: not less than~~] $705.

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

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a [~~The standard includes~~] forty (40) dollars personal needs allowance which shall be retained by the client.

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

Section 7. Citizenship and Residency. (1) Citizenship requirements. [~~To be eligible,~~] An applicant or recipient shall be:

(a) A citizen of the United States; or

(b) An alien legally admitted to this country; or

(c) For permanent residence an alien who is residing in this country under color of law. [~~An alien shall have been admitted for permanent residence.~~]

(2) Residence requirements.

(a) The applicant or recipient shall [~~also~~] be a resident of Kentucky.

(b) Except as specified in Sections 9 through 13 of this administrative regulation, [~~Generally, this means~~] the individual shall be residing in the state for other than a temporary purpose[~~; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals~~].

(c) Except as specified in Section 6 of this administrative regulation, the residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable [~~except as specified in Section 6 of this regulation~~].

(3) [~~(2)~~] Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. [~~In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable,~~]

(a) Except [~~that~~] with regard to the requirement shown in Section 6 of this regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(b) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(c) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(d) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(4) The [~~(3) When determining residency,~~] ability of the institutionalized individual to indicate intent [~~{~~]to become a Kentucky resident[~~}~~] shall be considered when determining residency of the individual. An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions. [~~If the individual is institutionalized.~~] The individual is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an [~~His~~] I.Q. of [~~is~~] forty-nine (49) or less or [~~he~~] has a

mental age of seven (7) or less, based on tests acceptable to the department; or

(b) [He] Is judged legally incompetent; or

(c) [Medical documentation, or other documentation acceptable to the state, supports a finding that he] Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

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

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

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he:

(a) Is residing in the state; and

(b) Intends [has the intention] to remain permanently or for an indefinite period; [(]or[,]

(c) If incapable of indicating intent, is simply residing in the state[)].

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

(a) [The state of residence of the individual's] Parents; or

(b) If one has been appointed, his legal guardian [if one has been appointed, is Kentucky]; or

(c) [(b) The state of residence of the] Parent applying for the supplemental payment on behalf of the individual if:

1. [is Kentucky, when] The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an [any] institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) [.] If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency according [pursuant] to subsections (7) and (8) of this section, the state of residency is Kentucky if:

(a) [when] The individual is residing in Kentucky; and

(b) A determination of residency applying those criteria does not show the individual to be a resident of another state.

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

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

(12) Except as stated in subsections (3) through (11) of this section:

(a) An [, any] individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky; and

(b) An [any] individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

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

(14) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

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

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

(15) If the [(16) No] aged, blind, or disabled person resides [shall be eligible for state supplementation while residing] in a personal care home or family care home [unless such home] is not is licensed under KRS 216B.010 to 216B.131, he shall not be eligible for state supplementation.

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

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

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including [(such as] mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; [)] or

(b) A primary or secondary diagnosis of mental illness [(]excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A [). An individual whose] medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis [shall meet the criteria of mental illness, regardless of the present diagnosis].

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

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

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician (CMT) training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease [licensed nurse or CMT] staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of

the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application is not required. [~~eligibility continues as long as criteria continues to be met.~~]

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

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

(7) [~~(8)~~] The PCH shall provide DSI [~~with its tax identification number and address annually and~~] with a monthly report.

(a) The report shall list:

1. [~~of~~] All residents of the PCH [~~(including resident's social security number)~~] who were residents [~~of the PCH~~] on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. [~~listing with~~] A star shall indicate [~~which indicates~~] a resident has a MI or MR diagnosis.

2. [~~and note with~~] A check mark shall indicate a resident receives [~~those residents who receive~~] state supplementation [~~but are not mentally ill or mentally retarded~~].

3. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month. [~~For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.~~]

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

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

(2) [~~(1)~~] MI or MR training shall be provided through a one (1) day workshop. [~~Training will cover at least~~] The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions [~~especially~~] with special attention [~~regard~~] to psychotropics.

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

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

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

(f) Instruction in providing [~~How to provide~~] necessary activities to meet the needs of mentally ill or mentally retarded residents.

(3) [~~(2)~~] Initial training shall include the licensed nurse or the individual who has successfully completed CMT training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. [~~For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter.~~]

(4) To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year [~~(one (1) additional staff member in each of the quarters following the initial training)~~].

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR training; or

2. Is enrolled in the next scheduled MI or MR training workshop at the closest location.

(5) [~~(3)~~] The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to DSI of staff who completed the training workshop.

(6) [~~(4)~~] DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR program. [~~, in accordance with 904 KAR 2:050.~~]

Section 10. MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify [~~their~~] eligibility to participate in the MI or MR supplement:

(a) [~~.~~] The PCH's initial MI or MR certification may be separate from the annual survey;

(b) [~~. However, after~~] The initial MI or MR certification[~~, the certification~~] shall be in effect until the next [~~subsequent~~] licensure survey that [~~, which~~] can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

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

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

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

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

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

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side affects.

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

(4) The Division of Licensing and Regulation shall also review the PCH copy of the training certification [~~listing submitted to DSI~~] prior

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

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

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

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

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

MIKE ROBINSON, Commissioner
LEONARD E. HELLER., Secretary
APPROVED BY AGENCY: October 15, 1992
FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 E. Randall

(1) Type and number of entities affected: 1) Section 4 will increase state supplementation recipients by a minimal amount. 2) Section 5 has no fiscal impact to DSI since this is a clarification of a procedural requirement now in practice by personal care and family care homes.

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

1. First year: a) Section 4 - recipients in personal care homes may increase by five individuals per year at an additional cost of $3300 per recipient per year and recipients in family care homes may increase by five individuals per year at an additional cost of $1200 per recipient per year. b) Section 5 - As this is a clarification of existing policy, no cost or savings is anticipated.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: a) Section 4 - $22,500 which can be absorbed by the current budget due to the small number of additional recipients anticipated. b) Section 5 - None.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The change in Section 4 is an exception to Medicaid policy regarding the treatment of income for institutionalized couples. This change is beneficial to state supplementation clients and was adopted to prevent the loss of eligibility for couples in which one spouse has a disproportionate share of the combined income. The change to Section 5 is a clarification of existing policy.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applied because the state supplementation program requires uniformity in the application of policy.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. State law KRS 205.245(2) authorizes a program of supplementary payments to aged, blind or disabled persons requiring special living arrangements.

3. Minimum or uniform standards contained in the federal mandate. None

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 and Development
(Proposed Amendment)

904 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, 205.520(3), 42 CFR 435.907, 435.909, 45 CFR 206(a)(1)

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility of administering public assistance programs including ~~[under Titles IV-A, XVI and XIX of the Social Security Act, namely]~~ Aid to Families with Dependent Children (AFDC), Mandatory and Optional Supplementation of the aged, blind and disabled (MS) and (OS), and Medical Assistance (MA). This administrative regulation sets forth the procedure by which an application for assistance under these programs shall be ~~[titles is]~~ made.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for any assistance program administered by the Cabinet for Human Resources through the Department for Social Insurance.

(2) An individual is eligible for MA without a separate application if he receives:

(a) AFDC;

(b) MS;
(c) OS; or
(d) [~~eligible for~~] Supplemental security income through the Social Security Administration [~~is eligible for MA without a separate application~~].

(3) An SSI applicant may file [~~is not precluded from filing~~] an application for MA with the Department for Social Insurance.

(4) An individual applying on the basis of age, blindness, or disability shall not be eligible as a medically needy individual, under 907 KAR 1:011, if [~~when~~] his income and resources are within SSI limits.

(5) Denial of SSI assistance for technical reasons by the Social Security Administration [~~for supplemental security income for technical reasons~~] is also considered a denial of MA.

Section 2. Application Process. An application shall [~~will~~] be considered to have been made when the individual or his representative has signed, under penalty of perjury:

(a) The Department for Social Insurance application form; [~~application form prescribed by the Department for Social Insurance~~] or

(b) The Social Security Administration application form [~~,~~] for SSI; [~~supplemental security income,~~] and

(c) The [~~such~~] application has been received at the appropriate office.

Section 3. Who May Sign an Application. (1) Except for a case based on incapacity, an application for AFDC shall be signed by:

(a) The relative with whom a needy child lives; or
(b) The legally appointed committee of the relative; or
(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for AFDC based on incapacity shall be signed by:

(a) Any individual listed in subsection (1) of this section; or
(b) An interested party acting on behalf of the applicant.

(3) [~~(2)~~] An application for MA shall be signed by:

(a) The individual requesting assistance;
(b) The relative with whom the child lives; or
(c) An interested party acting in behalf of the applicant.

(4) [~~(3) Prior to July 1, 1982,~~] An application for [~~AFDC FC (foster care) or~~] MA for children in foster care or private child caring institutions shall be signed by the representative of:

(a) The agency to which the child is committed; or
(b) The institution in which the child is placed.

(5) [~~(4)~~] An application for state supplementation shall be signed by:

(a) The aged, blind or disabled individual;
(b) An interested party;
(c) His[~~/her~~] legally appointed committee; or
(d) The representative payee receiving the SSI [~~supplemental security income~~] benefit.

Section 4. Where Applications are Filed. (1) Except for a concurrent application for MA and SSI, an application shall [~~Applications are to~~] be filed in the office of the Department for Social Insurance in the county in which the applicant resides.

(2) [~~except that~~] A concurrent application for SSI [~~supplemental security income~~] and MA shall be [~~is~~] filed in the service area office of the Social Security Administration.

(3) Application by mail.

(a) [~~(2) When~~] A Kentucky resident who is temporarily out-of-state, or someone acting on his behalf may initiate the application process by mail [~~a letter from the applicant, an interested party or an out-of-state agency will be accepted as the initiation of the application process~~] when:

1. An emergency arises from accident or sudden illness;
2. Care and services are needed immediately; and
3. Health would be endangered by returning [~~if he undertook to return~~] to the state.

(b) Upon notification of the emergency an [~~In this situation, the official~~] application form will be forwarded to the initiating party.

Section 5. Action on Applications. (1) A decision shall be made on each application and payment made [~~a check mailed~~] within:

(a) [~~five (5) days for emergency assistance,~~] Forty-five (45) days for AFDC or MA for families and children; or

(b) Ninety (90) days for MA or OS determinations in which permanent and total disability must be established.

(2) Exception to this [~~the above~~] time standard may be made when:

(a) The applicant [~~is cooperating but~~] is unable to obtain necessary verification for a determination of eligibility; [~~an eligibility decision to be made~~] or

(b) For [~~in instances in which delay is beyond the control of the department, that is,~~] failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician or because of an [~~some~~] administrative [~~or other~~] emergency [~~that could not be controlled by the department~~].

(3) The case record shall document the cause for the delay when the above time standards are not met[~~, the case record shall document the cause for the delay~~].

(4) Failure to process an application within the above time frame shall not be used as the basis for denial.

[~~Section 6. Provisions in this regulation shall become effective July 16, 1990, unless otherwise specified.~~]

Section 6. Material Incorporated by Reference. (1) Forms necessary for application for benefits under the AFDC, MS, OS or MA programs are incorporated effective January 1, 1993. These forms include the PA-1, revised October 1992, the PA-1A, revised effective March 1991, PA-1P, revised April 1992, and the PA-1UP, revised effective May 1991.

(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 15, 1992
FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 E. Randall
(1) Type and number of entities affected:

(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: For all instances except a case based on incapacity, an AFDC applicant must provide a written statement to authorize another person to apply on his behalf.

(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 a federal compliance issue, therefore no alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Federal and state statutes mandate that the AFDC program be implemented in a like manner on a statewide basis. Therefore, tiering is prohibited.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 206.10(a)(1)(ii).

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. 45 CFR 206.10(a)(1)(ii) requires the state agency to accept an application for AFDC filed on behalf of an applicant by an authorized representative.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:031. Payments for home health services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.70, 447.325, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services (effective July 1, 1992 using cost data submitted by the home health agency provider on the annual Medicaid home health agency cost report), taking into consideration the upper limit shown in Section 2 of this administrative regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX Home Health Reimbursement Manual, revised November 1, 1992 [~~July 1, 1991~~], which is hereby incorporated by reference. The Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost. A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual; the incentive payment shall not be subject to retrospective settlement.

(2) Payments made at the interim rate (except for incentive payments) shall be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this administrative regulation. The Medicaid final rates (except for incentive payments) shall not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies (except new facilities as shown in Section 5 of this administrative regulation) shall be reimbursed at full allowable cost but shall be subject to the Medicare upper limits. Payments for other agencies (except payments for disposable medical supplies, as shown in Section 4 of this administrative regulation), and incentive payments as shown in Section 1 of this administrative regulation shall not exceed a prospective upper limit which shall be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that are subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural shall be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) shall be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective with regard to services provided on or after July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment unless enrolled as a participating durable medical equipment provider.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Medicaid maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate may be adjusted if the provider documents the

justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1990. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Medicare maximum payment rate, the Medicaid maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations. This request shall be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report shall not extend the forty-five (45) day time limit. If the provider fails to appeal the audited cost report within the forty-five (45) days, the audited cost report shall be final and not subject to reopening unless the cabinet determines that there is suspected fraud or misrepresentation. The request for appeal shall indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report shall not be accepted. Upon receipt of the request for review, the division shall determine the need for a program/vendor conference and shall contact the home health agency to arrange a conference if needed. The conference, if needed, shall be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider shall be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director shall notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement Operations' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which shall include one (1) member of the Division of Reimbursement Operations, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the commissioner, with the designated member to serve as chairperson. The request for review by the reimbursement review panel shall [~~must~~] be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations. A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of a written request for the appeal. The question shall be heard by the panel. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which may be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit shall take precedence over the Medicare audit.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham

(1) Type and number of entities affected: All home health agencies participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. The cabinet, by administrative regulation, shall comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to advanced registered nurse practitioner services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Advanced Registered Nurse Practitioner (ARNP) Services. (1) For services provided on or after February 1, 1993, covered services shall include those furnished by a licensed participating advanced registered nurse practitioner (ARNP) (including nurse-midwifes) to eligible Medicaid [~~medical assistance~~] recipients through direct patient contact. Services shall be those which are within the scope of their practice as a licensed ARNP so long as the services are covered in the Medicaid program.

(2) Advanced registered nurse practitioners participating as [~~nurse-midwives or~~] nurse anesthetists shall also comply with [~~907 KAR 1:095, Payment for nurse-midwife services; 907 KAR 1:100, Nurse-midwife services;~~] 907 KAR 1:200, Nurse anesthetists' services; and 907 KAR 1:210, Payments for nurse anesthetists, as appropriate.

Section 2. Participation Requirements. An ARNP desiring to participate in the Medicaid [~~Medical Assistance~~] Program shall:

(1) Meet all applicable requirements of state laws and conditions for practice as a licensed ARNP. A current copy of the ARNP's license shall accompany each participation application;

(2) Enter into a provider agreement with the Cabinet for Human Resources, Department for Medicaid Services to provide ARNP services; and

(3) Provide and bill for the services in accordance with the terms and conditions of the provider participation agreement.

Section 3. Service Limitations. (1) Limitations applicable with regard to services provided by physicians (as described in 907 KAR 1:009) shall also be applicable with regard to ARNPs.

(2) Immunizations provided by ARNPs are not covered.

(3) When an ARNP and a physician perform the same service on the same day within a common practice, only one (1) of the services shall be covered.

(4) When an ARNP provides and bills an office visit, an office visit or consultation by a physician in a common practice with the ARNP for a visit by the same patient on the same day is not covered. When a physician(s) provides and bills an office visit, an office visit or consultation by an ARNP in a common practice with the physician for a visit by the same patient on the same day is not covered.

(5) When an ARNP refers a patient to a physician based on medical necessity, the necessity for the referral shall be documented in the patient's record or chart.

Section 4. 907 KAR 1:100, Nurse-midwife services, is hereby repealed. [~~Implementation Date. Coverage for services under this regulation shall be implemented for services performed by a participating advanced registered nurse practitioner on or after October 1, 1990.~~]

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p m
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: Advanced registered nurse practitioners/nurse-midwifes.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Reimbursement remains the same; only enrollment process simplified.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:104. Payments for advanced registered nurse practitioner services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, 42 USC 447.200
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. The cabinet, by administrative regulation, shall comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for advanced registered nurse practitioners (ARNP).

Section 1. General Requirements Relating to Payments. For services provided on or after February 1, 1993, participating licensed advanced registered nurse practitioners (including nurse-midwifes) shall be paid only for covered services rendered to eligible Medicaid [~~medical assistance~~] recipients which are within the scope of their practice as a licensed advanced registered nurse practitioner.

Section 2. Payments. (1) [~~For services provided on or after October 1, 1990,~~] Licensed participating advanced registered nurse practitioners shall be reimbursed at usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at seventy-five (75) percent of the physicians' fixed upper limit per procedure.

(2) An ARNP employed by a primary care center, federally qualified health center, or comprehensive care center shall not bill directly.

Section 3. 907 KAR 1:095, Payments for nurse-midwife services, is hereby repealed. [~~This regulation shall be effective with regard to services provided on and after October 1, 1990.~~]

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: Advanced registered nurse practitioners/nurse-midwifes.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Reimbursement remains the same; only enrollment process simplified.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:370. Incorporation by reference of the Community Mental Health Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the community mental health services component of the Medicaid Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Community Mental Health Services Manual, revised November [~~June~~] 1, 1992, used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort,

Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: All participating providers of community mental health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:382. Incorporation by reference of the Preventive Health Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a, 1396c, 1396d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid Program. The cabinet, by administrative regulation, is empowered to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the preventive health services component of the Medicaid Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Preventive Health Services Manual, revised September 1 [~~June 1~~], 1992 used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: All participating providers of preventive health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:

2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any indirect or direct cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:427. Incorporation by reference of the Primary Care Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the primary care services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Primary Care Services Manual, revised February 1, 1993 [~~November 1, 1988~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: All participating providers of primary care services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any indirect or direct cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as

well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:430. Incorporation by reference of the Home Health Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 447.325, 42 USC 1396a, b, c, d; 42 CFR 440.70
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the home health services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Home Health Services Manual, revised November 1, 1992 [~~1990~~], used in the implementation of this component of the Medicaid [~~Kentucky Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: All participating providers of home health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396r
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. The following definitions shall be applicable to this administrative regulation unless the specific context dictates otherwise:
(1) "Competency evaluation program" means the competency evaluation program required by 42 USC 1396r [~~Title XIX of the Social Security Act~~] for nurse aides employed by Medicaid [~~Title XIX~~] participating nursing facilities prior to October [~~July~~] 1, 1989, when the program is approved by the state in which the nursing facility is located.
(2) "Licensed health professional" means a physician, physician

assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, registered dietician, or licensed or certified social worker.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by 42 USC 1396r [~~Title XIX of the Social Security Act~~] to be in place for Medicaid [~~Title XIX~~] participating nursing facilities [~~(skilled nursing or intermediate care)~~], when the program is approved by the state in which the nursing facility is located.

(5) "State approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "[~~Kentucky Department for Medicaid Services~~] Nurse Aide Training Manual [~~and Competency Evaluation Program~~]" revised November 1, 1992 [~~(dated July 1989)~~] which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

Section 2. General Requirements. A participating nursing facility shall not use nurse aides on or after October [~~January~~] 1, 1990 for more than four (4) months unless the nurse aide has completed the nurse aide training and competency evaluation program, or the competency program if the individual was used by the facility prior to October [~~July~~] 1, 1989 as a nurse aide, or is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility is required to provide and document (as specified in the state approved program manual) twelve (12) [~~six (6)~~] hours of ongoing staff development annually [~~per quarter~~] for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. The "basic course" of nurse aide training consists of a minimum of fifty-nine (59) [~~forty-five (45)~~] classroom hours for theory and laboratory time and sixteen (16) [~~thirty (30)~~] hours of clinical experience for a total of seventy- five (75) hours. Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content are shown in the manual for the state approved program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. The nurse aide training program may be conducted by means of a Department of Adult and Technical [~~an Office of Vocational~~] Education program, nursing facility program, community college or university program or a licensed proprietary education program. Each agency wishing to provide nurse aide training shall [~~must~~] request and receive approval of the agency's training program by the Department for Medicaid Services prior to operating the nurse aide training program in accordance with the criteria shown in the manual for the state approved program. After initial approval of the training program, [~~the Department for Medicaid Services shall conduct an initial one (1) year postapproval review. After the one (1) year postapproval review,~~] each program shall [~~will~~] be monitored as follows:

(1) Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the Division of Licensing and Regulation, Office of the Inspector General, during the regularly scheduled annual survey for compliance with conditions of participation.

(2) Approved nurse aide training programs conducted by the Department of Adult and Technical [~~Office of Vocational~~] Education shall be monitored on site by the Cabinet for Workforce Development monitoring system [~~that office~~] at least every two (2) years; a self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews will be compiled by the Department of Adult and Technical Education and forwarded to the Department for Medicaid Services on a quarterly basis.

(3) The Department for Medicaid Services shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the Department for Medicaid Services a self-evaluation in each year [~~than an on site review is not performed~~].

Section 6. Termination of Nurse Aide Training Programs. The Department for Medicaid Services shall terminate from participation in the training program those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction. In addition, nurse aide training programs offered by or in a nursing facility shall not be approved if the facility falls within any of the prescribed clauses described in 42 USC 1396(r)(f)(2)(B)(iii)(I)(a), (b), and (c).

Section 7. Final Examination/Competency Evaluation. The Department of Adult and Technical Education[~~, Office of Vocational Education,~~] or other qualified entities as approved by the cabinet, shall be (by agreement with the Department for Medicaid Services) responsible for the final written or oral examination and the skills demonstration aspect of the competency evaluation.

Section 8. State Nurse Aide Registry. The Division of Licensing and Regulation, Office of the Inspector General shall (by agreement with the Department for Medicaid Services) be responsible for establishing and maintaining a registry of all nurse aides who have satisfactorily completed a nurse aide training and competency evaluation program or competency evaluation program or been granted an exception. In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program , or the competency evaluation program, the registry shall include specific documented findings by the state of individual resident abuse or neglect or misappropriation of resident property by nurse aides listed in the registry (determined in accordance with statutory requirements shown in Section 1919(g) of the Social Security Act), and a brief statement (if any) by the nurse aide disputing the finding(s); a finding may be included on the registry only after the nurse aide has been provided at least ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations. In the case of an inquiry to the registry concerning an individual listed in the registry, any information disclosed concerning [~~such~~] a finding shall also include disclosure of any nurse aide statement of rebuttal in the registry relating to the finding or a clear and accurate summary of the [~~such a~~] statement.

Section 9. Reciprocity. A nurse aide who has completed a nurse aide training and competency evaluation program in another state and is on that state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

(1) The other state's registry shall [~~must~~] provide appropriate written documentation showing the individual is on the other state's registry;

(2) An employment record shall [~~must~~] be provided to the Division of Licensing and Regulation sufficient to verify that the aide has been employed in a nursing home since the training and twenty-four (24) months have not elapsed since the individual worked for pay as a

nurse aide, and

(3) There shall [~~must~~] be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

Section 10. The manual incorporated by reference in this administrative regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham

(1) Type and number of entities affected: All nurse aides employed by nursing facilities participating in the Medicaid program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: $7,500 (cost).

2. Continuing costs or savings: $7,500 (cost).

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:474. Incorporation by reference of the Durable Medical Equipment Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.70, 447.321, 447.325, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the durable medical equipment component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Durable Medical Equipment Manual, revised November 1, 1992 [~~effective July 1, 1989~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham

(1) Type and number of entities affected: All participating providers of durable medical equipment are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any indirect or direct cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:550. Incorporation by reference of the targeted case management services adults manual.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the targeted case management services for adults with chronic mental illness component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Targeted Case Management Services Adults Manual revised September 1, 1992 [~~dated May 1, 1992~~] used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham

(1) Type and number of entities affected: All participating providers of targeted case management services for adults with chronic mental illness.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any indirect or direct cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation

applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:555. Incorporation by reference of the targeted case management services children manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the targeted case management services for [~~severely emotionally disturbed~~] children with a severe emotional disability component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the targeted case management services children manual revised September [~~dated May~~] 1, 1992 used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 11, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham
(1) Type and number of entities affected: All participating providers of targeted case management services for children with a severe emotional disability are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 1992

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:215. Nuclear pharmacy services.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is responsible to impose minimum standards in all settings where drug products are dispensed and to ensure the safety of all drug products provided to the citizens of the Commonwealth. This regulation applies to pharmacies as defined in KRS 315.010. The requirement of these rules and regulations are in addition to, and not in substitution of, other applicable rules and regulations promulgated by the Cabinet for Human Resources for radioactive materials and applicable rules and regulations promulgated by the Kentucky Board of Pharmacy.

Section 1. Definitions. (1) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

(2) "Radiopharmaceutical services" means those acts, services, operations and transactions necessary in the conduct, operation, management and control of a nuclear pharmacy, including, for example:

(a) The compounding, dispensing, labeling and delivery of radiopharmaceuticals;

(b) The participation in radiopharmaceutical utilization reviews; and

(c) The proper and safe storage and distribution of radiopharmaceuticals.

(3) "Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any of those drugs intended to be made radioactive. This includes nonradioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance, but does not include drugs which are carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

(4) "Radiopharmaceutical quality assurance" means the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, and it shall include, for example, internal test assessment, authentication of product history and the keeping of proper records.

(5) "Internal test assessment" means conducting those tests necessary to insure the integrity of the test.

(6) "Authentication of product history" means identifying the purchase source, the ultimate use or disposition and any intermediate handling of any components of a radiopharmaceutical.

(7) "Authorized practitioner" means a practitioner duly authorized by applicable federal and state law to possess, use and administer radiopharmaceuticals. This person must be named on a radioactive materials license issued by the Radiation Control Branch of the Cabinet for Human Resources.

(8) "Designated agent" means an individual who is under the direct supervision of an authorized practitioner and who is authorized to communicate that practitioner's instructions to a nuclear pharmacy.

(9) "Nuclear pharmacist" means a pharmacist licensed to practice in the Commonwealth of Kentucky and who meets minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Radiation Control Branch of the Cabinet for Human Resources.

(10) "Direct supervision" means that the supervising nuclear pharmacist shall be physically present in the general area or location where the supportive personnel are performing supportive duties and shall conduct inprocess and final checks.

Section 2. General Requirements for Pharmacies Providing Radiopharmaceutical Services. (1) A license to operate a pharmacy providing radiopharmaceutical services shall only be issued to a pharmacy operating under the direct supervision of a nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of a nuclear pharmacist. A nuclear pharmacist shall be responsible for all operations of the licensed area and in personal attendance at all times that the pharmacy is open for business.

(2) Nuclear pharmacies may be exempted from the general space requirements for pharmacies, but shall:

(a) Have adequate space, commensurate with the scope of services required and meeting Radiation Control Branch, Cabinet for Human Resources, requirements established for all radioactive material licencees in the Commonwealth;

(b) Be separate from the pharmacy areas for nonradioactive drugs;

(c) Be inaccessible to all unauthorized personnel; and

(d) Have a radioactive storage and decay area.

(3) The process used for handling radioactive materials by any license holder must involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials as approved in a Kentucky radioactive materials license. In order to ensure the public health and safety in this respect, a nuclear pharmacy shall first meet the following general environmental requirements where the handling of radiopharmaceutical materials takes place:

(a) Proper ventilation so that radioactive materials cannot be airborne from that environment to other nonoccupationally unrestricted areas;

(b) Proper location so that the receipt and dispersal of radioactive materials do not result in inadvertent and undesired contamination of other nonoccupationally labeled areas; and

(c) Proper design to allow radioactive materials to be contained in given areas to ensure adequate safety and protection to personnel working in or near them and to ensure proper operation of the corresponding assay equipment.

(4) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules and regulations of the Radiation Control Branch of the Cabinet for Human Resources.

(5) A nuclear pharmacy, upon receiving an oral prescription for a radiopharmaceutical, shall immediately have the prescription reduced to writing or recorded in a data processing system, which writing or record shall contain at least the following:

(a) The name of the authorized user or his agent;

(b) The date of distribution and the time of administration of the radiopharmaceutical;

(c) The name of the procedure;

(d) The name of the radiopharmaceutical;

(e) The dose or quantity of the radiopharmaceutical;

(f) The serial number assigned to the order for the radiopharmaceutical;

(g) Any specific instructions; and

(h) The patient's name, whenever an order is for a therapeutic or blood-product radiopharmaceutical.

(6) The immediate outer container of a radioactive drug to be dispensed shall be labeled with the:

(a) Standard radiation symbol;

(b) Words, "Caution-Radioactive Material";
(c) Radionuclide;
(d) Chemical form;
(e) Amount of radioactive material contained in millicuries or microcuries;
(f) Volume in cubic centimeters, if a liquid;
(g) Requested calibration time for the radioactivity contained;
(h) Name, address, and telephone number of the nuclear pharmacy;
(i) Prescription number;
(j) Date; and
(k) Space for patient's name.
(7) The immediate container shall be labeled with the:
(a) Standard radiation symbol;
(b) Words, "Caution-Radioactive Material";
(c) Name of the nuclear pharmacy;
(d) Prescription number; and
(e) Name of the radiopharmaceutical.
(8) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.
(9) A nuclear pharmacist may transfer to authorized persons, in accordance with the provisions of a Kentucky radioactive materials license, radioactive materials not intended for drug use and radiopharmaceuticals intended for individual patient use.
(10) Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies including those laws and regulations governing nonradioactive drugs. For nuclear pharmacies handling radiopharmaceuticals exclusively, the Kentucky Board of Pharmacy may waive regulations pertaining to pharmacy licenses for nonradiopharmaceuticals which requirements do not pertain to the practice of nuclear pharmacy.
(11) Radioactive drugs are to be dispensed only upon a nonrefillable prescription order from a Radiation Control Branch, Cabinet for Human Resources, licensed medical practitioner (or the designated agent) authorized to possess, use and administer radiopharmaceuticals.
(12) Prescription orders for delivery of radioactive drugs for use in the medical practice of a Radiation Control Branch, Cabinet for Human Resources, licensed medical practitioner may be placed on a telephone answering and recording device, only if the practitioner (or the designated agent) is identified in such a manner that is clearly recognized by the nuclear pharmacist dispensing the radioactive drug.
(13) A nuclear pharmacist in charge of a nuclear pharmacy shall have the authority to delegate to any qualified and properly trained person or persons, acting under his direct supervision, any nuclear pharmacy act which a reasonable and prudent nuclear pharmacist would find is within the scope of sound pharmaceutical judgment to delegate. The delegation shall only occur if, in the professional opinion of the delegating nuclear pharmacist-in-charge, the act may be properly and safely performed by the person to whom the act is delegated. The delegated act shall only be performed in its customary manner and not in violation of other statutes. Persons to whom nuclear pharmacy acts are delegated shall not hold themselves out to the public as being authorized to practice pharmacy.

Section 3. Minimum Requirements for Space, Equipment, Supplies, and Library. (1) Each nuclear pharmacy must meet the following requirements for space:
(a) The area for the storage, compounding, and dispensing of radioactive drugs shall be completely separate from pharmacy areas for nonradioactive drugs;
(b) Hot lab and storage area shall be a minimum of 120 square feet; and
(c) The compounding and dispensing area shall be a minimum of 300 square feet.
(2) Each nuclear pharmacy shall be equipped with at least the following items of equipment:
(a) Dose calibrator;
(b) Refrigerator;
(c) Drawing station;
(d) Well scintillation counter;
(e) Microscope;
(f) Chromatagraphic apparatus or comparable means of effectively assuring tagging efficiency;
(g) Portable radiation survey meter; and
(h) Other equipment deemed necessary for radiopharmaceutical quality assurance for products compounded or dispensed as shall be determined by the Radiation Control Branch, Cabinet for Human Resources, and the Kentucky Board of Pharmacy.
(3) Each nuclear pharmacy shall have on the premises current editions or revisions of the following reference materials:
(a) United States Pharmacopedia-National Formulary with supplements;
(b) State statutes and regulations relating to pharmacy;
(c) State and federal regulations governing the use of applicable radioactive materials; and
(d) Text relating to the practice of nuclear pharmacy and radiation safety.

Section 4. Radiopharmaceutical Quality Assurance. The holder of a nuclear pharmacy license shall be responsible for the radiopharmaceutical quality assurance of all radiopharmaceuticals, including biologicals, dispensed or manufactured.

TOM M. HOUCHENS, President
APPROVED BY AGENCY: October 14, 1992
FILED WITH LRC: October 29, 1992 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1992, at 10 a.m. (Frankfort prevailing time), 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 Decmeber 16, 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: Two
(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: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 211.844

(a) Necessity of proposed regulation if in conflict: Is not in conflict; imposes standards for pharmacists dispensing nuclear drug products.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Overlap relates only to pharmacies licensed by the Kentucky Board of Pharmacy.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A

STATE INTERAGENCY COUNCIL FOR SERVICES TO CHILDREN WITH AN EMOTIONAL DISABILITY

202 KAR 1:010. Uniform grievance procedure for children with an emotional disability.

RELATES TO: KRS 200.505

STATUTORY AUTHORITY: KRS 200.505

NECESSITY AND FUNCTION: This regulation defines the "uniform grievance procedure" to be used by the Regional Interagency Councils for Children with an Emotional Disability and the State Interagency Council for Services to Children with an Emotional Disability.

Section 1. Definitions. (1) "Appeal" means a formal request to SIAC to review the disposition of a grievance by a RIAC.

(2) "Complainant" means any of the following persons who may initiate a grievance with the RIAC:

(a) A nominated child age sixteen (16) or older;

(b) A nominated child's parent; or

(c) An adult who has been authorized in writing as a representative for the purposes of initiating a grievance by one (1) of the persons listed above or by a nominated child under the age of sixteen (16).

(3) "Grievance" means a formal request for reconsideration of a decision made by an interagency service planning team or a RIAC.

(4) "IFBSS" means Individualized Family Based Support Services.

(5) "Local resource coordinator" means chief staff person to the RIAC.

(6) "Nominated child" means a child who has been nominated for or who is receiving services under the auspices of a RIAC.

(7) "Parent" means the natural parent, adoptive parent, legal guardian, or other person exercising custodial control or supervision, including relatives and foster parents, with whom the child was living when the event over which the grievance is filed occurred.

(8) "RIAC" means Regional Interagency Council for Services to Children with an Emotional Disability.

(9) "SIAC" means State Interagency Council for Services to Children with an Emotional Disability.

Section 2. Grievance Notification Procedure. (1) A grievance may be filed by a complainant with a RIAC grievance form in the following circumstances:

(a) A RIAC refers, defers, or denies a nomination;

(b) The parent or nominated child over age sixteen (16) expresses disagreement with the interagency service plan; or

(c) A RIAC denies or reduces an allocation of IFBSS to the nominated child and family.

(2) The local resource coordinator shall ensure that:

(a) Adverse decisions of the RIAC are reviewed with parents of the nominated child;

(b) Parents of the nominated child are notified of the grievance procedure if they disagree with the decision of the RIAC;

(c) Attempts are made to informally resolve the grievance if appropriate;

(d) Assistance is provided to a complainant who requests it with initiating the grievance procedure; and

(e) The notification process is documented.

(3) Services to the nominated child and family shall continue while the grievance is pending. If the grievance concerns a reduction of IFBSS, the allocation of IFBSS shall be restored pending resolution of the grievance.

Section 3. Types of Grievances. The following are the two (2) types of grievances which may be filed with the RIAC.

(1) Grievances relating to the interagency service plan over which the RIAC has complete control.

(a) These grievances may be initiated regarding any matter relating to the interagency service plan created for a nominated child. However, grievances regarding aspects of a service plan over which one (1) of the agencies represented on the RIAC has complete control shall be initiated with that agency using that agency's grievance procedure.

(b) The service coordinator shall assist the complainant in reviewing the appropriate agency's grievance procedure and include a referral to the appropriate representative.

(2) Grievances regarding a decision by a RIAC to deny or reduce services to a nominated child and family. Grievances may be initiated regarding the following decisions of a RIAC:

(a) To defer, refer, or deny a nominated child for service coordination; or

(b) To reduce or deny IFBSS-funded services recommended for a nominated child and family by an interagency service planning team.

Section 4. Forms for Grievances. (1) Grievances may be initiated by using the standard form ("RIAC Grievance") or another written notice that includes the following information:

(a) The type of grievance ("interagency service plan" or "RIAC denial of services");

(b) A brief summary of the situation that has led to the grievance, including dates and personnel involved if possible;

(c) The signature of the person initiating the grievance;

(d) The relationship to the nominated child of the person who is initiating the grievance; and

(e) The date the grievance is signed.

(2) The written grievance shall be delivered or sent by first class mail to the chair of the RIAC. The grievance shall be marked with the date of receipt.

(3) A copy of the standard grievance form is incorporated by reference and may be inspected and obtained through the Chair, State Interagency Council for Services to Children with Emotional Disabilities, Department for Mental Health and Mental Retardation Services, 275 E. Main St., Frankfort, KY 40621.

Section 5. Inquiries Into Grievances. (1) Within two (2) weeks of receipt of a grievance, the chair of the RIAC shall appoint an individual to make an inquiry into the grievance. The person appointed for the inquiry may be a member of an agency which currently serves the child and family, but shall not have been involved in the formulation of the plan or the decision which the grievance concerns, or was involved with the direct supervision or delivery of services to the family.

(2) The inquiry shall include:

(a) A telephone or personal interview with the complainant; (b) Telephone or personal interviews with the persons involved in decisions about the grievance and others with knowledge of the circumstances of the decision; and

(c) A review of documents which are associated with the grievance.

(3) The inquiry process may include negotiation of a proposed settlement of the grievance.

(4) At the conclusion of the inquiry, the person who made the inquiry shall request the chair of the RIAC to place the grievance on the agenda of the next regularly scheduled RIAC meeting.

(5) The inquiry shall last no longer than two (2) weeks from the date of receipt of the grievance by the RIAC chair.

(6) The complainant shall be informed of the recommendation of the person who made the inquiry when the request is made to place the grievance on the agenda of the RIAC.

Section 6. Consideration of the Grievance by the RIAC. (1) When the person appointed to conduct the inquiry advises the chair of the RIAC that the inquiry process has been completed, the chair of the RIAC shall schedule a presentation of the grievance and inquiry findings at the next regularly scheduled meeting of the RIAC, but no later than one (1) month following the conclusion of the inquiry.

(2) The following persons shall be invited to appear at the presentation:

(a) The person who conducted the inquiry;

(b) Persons that the individual that conducted the inquiry believes can provide information that would be helpful in the reconsideration of the issue by the RIAC, or who may be affected by a reconsideration of the initial decision;

(c) The complainant and any authorized representative; and

(d) Persons whom the complainant wishes to be in attendance.

(3) At the meeting of the RIAC, a presentation shall be made by the persons attending regarding the grievance in the order listed above. The chair of the RIAC may set and enforce uniform time limits for presentations. If the complainant is absent from the presentation, the chair of the RIAC may postpone the presentation until no later than the next regularly scheduled meeting.

(4) At the conclusion of the presentation, the person who conducted the inquiry shall make recommendations to the RIAC regarding resolution of the grievance.

(5) If a settlement to the grievance is negotiated during the inquiry, only the person who conducted the inquiry and the complainant shall appear to report the settlement to the RIAC.

(6) All presentations to the RIAC regarding grievances, and discussion by the RIAC of the disposition, shall be audiotaped. Prior to the meeting, all parties to the grievance shall be advised that presentations and discussions will be audiotaped.

Section 7. Disposition of Grievances by the RIAC. (1) At the conclusion of the presentation, the RIAC shall vote to go into executive session to consider the grievance and then in open session make one (1) of the following decisions:

(a) The grievance is not one which the RIAC can resolve because it concerns a matter over which an agency represented on the RIAC has complete control. In this case, the chair may request the RIAC representative of that agency to assist in the resolution of the grievance;

(b) The original interagency service plan or RIAC decision stands;

(c) The previous decision to defer, refer, or deny the nomination of a child is set aside, and the child is accepted for service coordination;

(d) A new interagency service planning meeting shall be conducted, using new instructions or recommendations from the RIAC; or

(e) The previous denial or reduction of services by the RIAC is set aside, and new levels of service are established.

(2) The decision of the RIAC shall be summarized in a letter to the complainant, with copies to the authorized representative, if any, and the local resource coordinator. The letter shall be sent within two (2) weeks of the presentation of the grievance to the RIAC. The letter shall include information as to how the decision of the RIAC may be appealed to SIAC.

Section 8. Appeals to SIAC. The disposition of a grievance by a RIAC may be appealed to the SIAC.

(1) An appeal to the SIAC is made in writing to the State Coordinator of Kentucky IMPACT, c/o Department for Mental Health and Mental Retardation Services, 275 E. Main St., Frankfort, KY 40621. A copy of the disposition letter from the RIAC chair shall be attached.

(2) The appeal to SIAC shall be initiated within two (2) weeks of the date of the letter from the RIAC chair about the disposition of the appeal.

(3) The appeal to SIAC shall only be initiated by the person who initiated the grievance with the RIAC or by the authorized representative.

(4) Upon receipt of a letter appealing the RIAC disposition of a grievance, the state coordinator shall consult with the chair of the SIAC regarding the method for addressing the SIAC appeal.

(5) In all appeals of grievances to the SIAC, the SIAC chair shall appoint a SIAC member, a designee of a SIAC member, or staff to the SIAC to review documentation of the RIAC's disposition of the grievance and recommend a resolution of the appeal to a future meeting of the SIAC.

(6) If no recommendation for a resolution based on documentation can be made, the chair of the SIAC shall determine a method for further investigation and recommendation regarding the appeal including, but not limited to:

(a) The SIAC chair may appoint a SIAC member, designee of a SIAC member, or staff to the SIAC to make a personal inquiry into the grievance and make a recommendation to SIAC regarding resolution of the appeal; or

(b) The SIAC may hear a presentation by the RIAC and the complainant in a format established by the SIAC chair.

(5) The investigation and recommendation regarding the appeal to SIAC shall be completed within thirty (30) days of the receipt of the appeal.

Section 9. Disposition of Appeals by SIAC. (1) The SIAC shall be informed of all appeals, the methods chosen to address them, and the resolutions recommended for them. The SIAC may choose to resolve appeals in one (1) of the following ways:

(a) Recommend further inquiry or reconsideration by the RIAC;

(b) Permit the disposition by the RIAC of the grievance stand as made; or

(c) Advise the RIAC to change the disposition of the grievance. If the RIAC is advised to change its disposition, the SIAC shall make recommendations and offer on-site technical assistance to the RIAC.

(2) The SIAC chair shall inform the complainant of the SIAC's disposition of the appeal by letter. Copies shall be sent to the complainant's authorized representative, if any; to the RIAC chair; and to the local resource coordinator.

DENNIS D. BOYD, CHAIR

APPROVED BY AGENCY: November 12, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992, at 10 a.m. in the small conference room at the Department for Mental Health/Mental Retardation Services, Fair Oaks Lane, Frankfort, KY 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by December 17, 1992, five days prior to the hearing, of their intent to attend. If no notification or 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 to the contact person.

CONTACT PERSON: Dennis D. Boyd, Chair, State Interagency Council, DMH/MRS, 275 East Main Street, Frankfort, KY 40621, (502) 564-4527.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis D. Boyd

(1) Type and number of entities affected: State Interagency Council for Services to Children and Youth with an Emotional Disability (1); Regional Interagency Councils (18). An estimated eighty (80) children with severe emotional disabilities may use the grievance procedure on an annual basis at the regional and state level.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to the affected entities because this administrative regulation incorporates a function of the program as it currently exists.

(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: Affected entities must submit a grievance procedure form. Written response is required.

(2) Effects on the promulgating administrative body: The State Interagency Council for Services to Children and Youth with an Emotional Disability will hear grievances that cannot be resolved at the regional level.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the affected entities because this administrative regulation incorporates a function of the program as it currently exists.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: A written response is required.

(3) Assessment of anticipated effect on state and local revenues: There are no direct or indirect costs or savings to the affected entities because this administrative regulation incorporates a function of the program as it currently exists.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation is required by statute.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The administrative regulation will equally apply to all parties served by this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 63:035. Gasoline dispensing facilities, Stage II.

RELATES TO: KRS Chapter 224, 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120; 42 USC 7511a(b)(1)(A)

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7511a(b)(3), 7521(a)(5), 7624, 7625

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 emissions from gasoline dispensing facilities.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) "Average monthly throughput" means the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months.

(2) "Boot" or "bellows" means an accordion-like tubular cover used over a gasoline nozzle to capture the gasoline vapors displaced during vehicle refueling.

(3) "Cabinet" has the meaning given it in KRS 224.01-010.

(4) "CARB" means the California Air Resources Board.

(5) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(6) "Coaxial hose" means a hose that has the configuration of a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(7) "Compliance test" means a test conducted or witnessed by the cabinet used to determine compliance with the provisions of all applicable administrative regulations prior to issuance of a permit to operate.

(8) "Dry break" means a poppet valve seal to which a vapor return hose can be attached.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Executive order" means a document provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during the fueling of a motor vehicle at a facility, and which identifies the performance standards required for the system or system components.

(11) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank which provides fuel to the engine of that motor vehicle.

(12) "Facility representative" means a person employed at a facility with a Stage II vapor recovery system who has been trained to serve at that facility as prescribed in Section 8 of this administrative regulation.

(13) "Functional test" means a test performed during the operation of the vapor recovery system or any of the system components to determine if a component is functioning correctly.

(14) "Gasoline" means any petroleum distillate or petroleum distillate and alcohol blend having a Reid vapor pressure of four (4.0) pounds per square inch (twenty-seven and six-tenths (27.6) kilopascals) or greater which is used as a fuel for internal combustion engines.

(15) "Initial monthly throughput" means:

(a) For a facility which commenced construction before the classification date, the total gallons of gasoline dispensed during the months of operation in the twenty-four (24) months preceding the classification date divided by the number of months of operation during those twenty-four (24) months;

(b) For a facility which commenced construction on or after the classification date, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(16) "Initial test" means a test which is performed following completion of construction or modification to determine the capability of the facility to meet the requirements contained in Section 4 of this

administrative regulation.

(17) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or functional testing.

(18) "Modification" or "modify" means the replacement, repair, or upgrade of seventy-five (75) percent or more of the facility's Stage II equipment. Determination of the percentage is based on the cost of a total system replacement at the time of modification.

(19) "Month" means calendar month.

(20) "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(21) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(22) "Owner or operator" means any person who owns, leases, operates, manages, supervises, or controls (directly or indirectly) a gasoline dispensing facility.

(23) "Person" has the meaning given it in KRS 224.01-010.

(24) "Registration date" means the date the owner or operator applies to the cabinet for the exemption provided in Section 3 of this administrative regulation.

(25) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases, as determined by ASTM Method D323-82, which is incorporated by reference in 401 KAR 50:015.

(26) "Stage II vapor recovery" means gasoline vapor recovery during the refueling of a motor vehicle from a stationary storage tank at a facility.

(27) "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the fueling of a motor vehicle at a facility by ninety-five (95) percent or more.

(28) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Section 2. Applicability. This administrative regulation shall apply to each gasoline dispensing facility located in a county or a portion of a county designated nonattainment for ozone, for any nonattainment classification except marginal, as defined in 401 KAR 51:010.

Section 3. Exemptions. (1) A facility commencing construction prior to the classification date and having an initial monthly throughput of 10,000 gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet within six (6) months after the classification date;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the classification date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the classification date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(2) A facility commencing construction on or after the classification date and having an initial monthly throughput of 10,000 gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet before the facility begins dispensing gasoline;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the registration date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the registration date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(3) If the average monthly throughput of an exempted facility exceeds 10,000 gallons, the facility shall cease to be exempted and the owner or operator shall comply with this administrative regulation within six (6) months of the anniversary date on which the calculation was made.

Section 4. Permit Requirements. (1) A person shall not construct or modify a Stage II vapor recovery system unless a permit has been issued by the cabinet pursuant to 401 KAR 50:035.

(2) After the applicable compliance date in Section 5 of this administrative regulation, an owner or operator shall not transfer or allow the transfer of gasoline from a stationary storage tank at a gasoline dispensing facility into a motor vehicle fuel tank unless:

(a) A Stage II vapor recovery system is properly constructed and operated during the transfer;

(b) Coaxial hoses are used at the dispensers;

(c) The Stage II vapor recovery system contains no components that would impede the performance of the functional or compliance tests of the system; and

(d) One (1) of the following conditions is met:

1. An initial test as specified in Section 9(1) of this administrative regulation has been passed and the cabinet has not denied the facility a permit to operate. The authority to operate pursuant to the initial test shall expire sixty (60) days after performance of the initial test, except as provided in Section 9(2)(b) of this administrative regulation.

2. A compliance test as specified in Section 9(2) of this administrative regulation has been passed and a complete application for a permit to operate has been submitted to the cabinet. The application shall be submitted within two (2) weeks of the compliance test date.

Section 5. Compliance Timetable. (1) The owner or operator of a facility to which this administrative regulation applies shall comply with this administrative regulation in the following manner:

(a) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput of 100,000 gallons or more shall comply within one (1) year of the classification date.

(b) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput between 10,000 and 100,000 gallons shall comply within two (2) years of the classification date.

(c) Facilities which commenced construction on or after November 15, 1990, and on or before the classification date, shall comply within six (6) months of the classification date.

(d) Facilities commencing construction after the classification date shall comply with this administrative regulation before they commence dispensing gasoline.

(2) A facility shall be considered to have met the compliance timetable if the initial test has been passed and submitted to the cabinet by the date prescribed in subsection (1) of this section. This shall not exempt a facility from the requirements of Section 4(2)(d)2 of this administrative regulation.

Section 6. Operating Requirements. The owner or operator shall maintain the Stage II vapor recovery system in accordance with the manufacturer's specifications and the criteria issued in the executive order of CARB or an equivalent authority approving the system. The owner or operator shall comply with the following:

(1) An owner or operator shall not dispense gasoline, or allow a person to dispense gasoline, using Stage II vapor recovery equipment containing a defect listed in this subsection. If a defect described in this subsection is discovered, the owner or operator shall post an "Out of Order" sign on the equipment and shall ensure that the

equipment is rendered inoperable. The defects shall include:

(a) The absence or disconnection of any component that is part of the Stage II vapor recovery system;

(b) The use of equipment not in accord with the system certification;

(c) A vapor hose that is crimped or flattened so that:

1. The vapor passage is completely blocked; or

2. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;

(d) A nozzle boot that is torn in one (1) or more of the following ways:

1. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or

2. A hole more than one-half (1/2) inch in diameter; or

3. A slit more than one (1) inch in length;

(e) A faceplate or flexible cone on the boot of a nozzle that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

(f) A malfunctioning nozzle shutoff mechanism;

(g) Vapor return lines, including components such as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

(h) An inoperative vapor processing unit;

(i) An inoperative vacuum producing device;

(j) An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

(k) Leaks; or

(l) An equipment defect or changes to a component of the system which the cabinet determines will substantially impair the control efficiency of the system.

(2) A defect in a component of the Stage II vapor recovery system which is not listed in subsection (1) of this section may remain in operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(3) If the cabinet identifies a defect specified in subsection (1) of this section, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been authorized for use by the cabinet.

(4) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(5) The owner or operator shall ensure that operating instructions for dispensing fuel are displayed on or near each dispenser which include, at a minimum:

(a) A clear description of how to use the equipment;

(b) A warning not to attempt continued dispensing of fuel after automatic shutoff; and

(c) A telephone number established by the cabinet to report problems experienced with equipment.

Section 7. Requirements for Persons Constructing or Modifying Stage II Vapor Recovery Systems. (1) An owner or operator shall not cause or allow the construction or modification of a Stage II vapor recovery system by a person unless:

(a) The person is a registered engineer or employs a person exercising control over the construction or modification who is a registered engineer; or

(b) The person has been trained at a seminar given by the manufacturer or distributor of the vapor recovery equipment that is being constructed or modified (or a similar Stage II vapor recovery system), or employs a person who will exercise control over the construction or modification who is so trained.

(2) The person who constructs or modifies a Stage II vapor recovery system at a facility shall conduct the initial and compliance tests prescribed in Section 9 of this administrative regulation. If the person who constructs or modifies a Stage II vapor recovery system at a facility is unable to conduct the initial or compliance test, the owner or operator shall provide a person to conduct the test who is qualified according to the requirements of subsection (1) of this section.

Section 8. Training of Facility Employees. (1) The owner or operator shall ensure that he or at least one (1) person at the facility is trained to operate the vapor recovery system, and that the training includes the following topics:

(a) Purposes and effects of the Stage II vapor recovery program;

(b) Operation and functioning of the vapor recovery system at that facility;

(c) Start-up and shut-down procedures, including daily equipment inspections;

(d) How to repair or replace faulty equipment without voiding the equipment warranties;

(e) Procedures for posting and removing "Out of Service" signs;

(f) The executive orders of CARB or of the equivalent authority certifying the system, the range of components certified for use in the system, and the requirements placed on the owner or operator by CARB or the equivalent authority;

(g) Maintenance schedules and requirements for the system and its components;

(h) Equipment warranties; and

(i) Equipment manufacturer and rebuilder contacts, including names, addresses, and phone numbers, for parts and service.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training is provided by training manuals, they shall be kept at the facility and made available to the cabinet upon request.

(3) The owner or operator shall ensure that the training includes a practical demonstration wherein the facility representative demonstrates an ability to operate and inspect the equipment and to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system. The cabinet may require that this demonstration be performed and witnessed by the cabinet as a condition for compliance.

(4) The owner or operator shall obtain a Facility Representative Training Certificate, DEP-6049, which is incorporated by reference in Section 11 of this administrative regulation, from the cabinet for each trained facility representative in his employ. This form shall be:

(a) Signed by the facility representative, certifying that he has been trained as prescribed in subsection (2) of this section;

(b) Signed by the owner or operator, certifying that he has witnessed a practical demonstration performed by the facility representative as prescribed in subsection (3) of this section; and

(c) Notarized.

(5) The owner or operator shall maintain a recorded history of all trained facility representatives which includes the following:

(a) The name of the facility representative and the date he received the training certificate required in subsection (4) of this section; and

(b) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than ninety (90) consecutive days without a trained facility representative.

Section 9. Test Methods and Procedures. As provided in Section 4(2)(d) of this administrative regulation and at other times as may be required by the cabinet, the owner or operator shall conduct tests

according to this section.

(1) Initial test. Upon completion of the construction or modification of a Stage II vapor recovery system, the owner or operator may conduct an initial test as prescribed in subsection (3) of this section as appropriate for the system. At least two (2) working days before the tests are conducted, the owner or operator shall inform the appropriate regional office of the division of the date the initial test will be conducted.

(2) Compliance test. After the facility has completed construction, the owner or operator shall conduct a compliance test as prescribed in subsection (3) of this section.

(a) After completion of construction the owner or operator shall contact the appropriate regional office to schedule a compliance test. The owner or operator shall deliver a written confirmation of the test date to the regional office at least five (5) working days before the test date. The confirmation letter shall name the person who will conduct the compliance test.

(b) The compliance test shall be conducted no more than sixty (60) days after construction is completed, except that the date for the compliance test may be delayed up to 180 days after construction is completed, if the cabinet deems the time extension necessary.

(c) If the facility fails the compliance test, the cabinet shall give the owner or operator thirty (30) days notice to correct the deficits, and a new date for the compliance test shall be set.

(3) Initial or compliance tests shall be conducted in accordance with the following test procedures as found in Appendix J of the EPA document, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, Appendices," which is incorporated by reference in Section 11 of this administrative regulation, except that the cabinet may approve other test procedures approved by CARB or an equivalent authority and the U.S. EPA:

(a) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure.

(b) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs. Flow/Liquid Blockage Test Procedure. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser from which gasoline can be dispensed simultaneously.

(c) Bay Area Source Test Procedure ST-37, Liquid Removal Devices. This test applies only to systems using liquid removal devices.

Section 10. Recordkeeping Requirements. (1) The owner or operator shall maintain at the facility the following records:

(a) All applicable permits and licenses required to operate the facility;

(b) The executive orders of CARB or the equivalent authority for the Stage II vapor recovery system;

(c) Names, addresses, and phone numbers of persons who construct or modify the Stage II system;

(d) Current Facility Representative Training Certificate; and

(e) Test results which verify that the vapor recovery system meets or exceeds the requirements of the tests noted in Section 9 of this administrative regulation. The test results shall be dated, and the names, work addresses and phone numbers of the persons conducting the tests shall be listed.

(2) The following records shall be maintained at the facility for two (2) years:

(a) Maintenance records including any repaired or replacement parts and description of the problem;

(b) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order;

(c) Gasoline throughput records and a record of months of operation which will allow the average monthly gasoline throughput rate to be continuously determined;

(d) Inspection reports issued by the cabinet, kept in chronological order; and

(e) The facility representative record mandated in Section 8(5) of this administrative regulation.

(3) These records shall be kept current and made available to the cabinet upon request.

Section 11. Reference Material. (1) Incorporation by reference. The following documents are incorporated by reference:

(a) U.S. Environmental Protection Agency, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA-450/3-91-022b, November 1991, Appendix J, Stage II Installation Test Methods, pages J.1 through J.5-8; available from the U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(b) DEP 6049, Facility Representative Training Certificate, November 1992.

(2) Copies of the material incorporated by reference 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 12. Penalties. (1) An owner or operator who violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS Chapter 224.

(2) The cabinet may deny, suspend, revoke, or modify a permit to construct or a permit to operate a Stage II vapor recovery system due to repeated malfunctioning of the system or its components, or due to systemic problems in testing the system.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: November 12, 1992
FILED WITH LRC: November 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed administrative regulation will be conducted December 28, 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 regulation requires that gasoline dispensing facilities, which are located in Kentucky's moderate ozone nonattainment areas, and which have an average monthly gasoline throughput of greater than 10,000 gallons, must install Stage II vapor recovery systems as mandated by the 1990 Clean Air Act Amendments (CAAA). The areas which are affected by this regulation are Boone, Campbell, Kenton, and Boyd counties, and parts of Greenup, Oldham, and Bullitt counties. Facilities in Jefferson

County must also install Stage II, but the Jefferson County Air Pollution Control District will implement the Stage II program for that county. The cabinet has identified the following number of facilities which must install Stage II systems in the above referenced counties:

Boone County	53
Kenton County	65
Campbell County	39
Boyd County	35
Greenup County	15
Oldham County	22
Bullitt County	28
Total facilities	257

Facilities with an average monthly throughput of 10,000 gallons or less are exempt from this administrative regulation if they register with the cabinet and maintain appropriate gasoline throughput records.

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

1. First year: The cost for constructing a new facility with Stage II adds about $1,000 per dispenser. (This includes Stage I costs.) The cost is somewhat higher, up to $1,500 per dispenser, for small facilities with vapor processor units. The cost for retrofitting a facility with Stage II varies between $1,500 per dispenser for a large facility and $3,500 per dispenser for a small facility with a vapor processor unit. In California, the Leak Test costs about $200 and the Back Pressure Test between $150 and $250 depending on the size of the facility. In St Louis, the set of compliance tests totals less than $500. If there are no leaks, the Leak Test will shut the facility for less than an hour. If there are leaks, it may take up to a day to find and eliminate the leaks, especially if the underground piping has to be uncovered.

2. Continuing costs or savings: The annual increased costs of maintenance and capital recovery for a balance system or a balanced vacuum system vary from $70 extra per dispenser for a new large facility to $400 per dispenser for a small retrofitted facility. (The increased costs are partially offset by the gasoline vapors which are recovered.) These costs add about one tenth of a cent ($0.001) per gallon in large facilities, and about seven tenths of a cent ($0.007) per gallon in small facilities. For vacuum systems which use processor units to burn part of the recovered vapors, the annual cost varies from $200 extra per dispenser for a new large facility, to $800 per dispenser for a small retrofitted facility. The additional costs for these facilities are about three tenths of a cent ($0.003) per gallon in a large facility, and one and four tenths of a cent ($0.014) per gallon in a small facility.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): With only the controls required in 401 KAR 59:175 and 401 KAR 61:085 (Stage I) in place, no affected facility has a large enough throughput to produce twenty five (25) tons of VOCs, and thus no emission fee will be charged for these sources under the present Kentucky statutes and regulations. Every fifth year the facility must undergo a compliance test which may cost up to $500.

(b) Reporting and paperwork requirements: The owner or operator of each facility is required to apply for a construction permit to install the Stage II vapor recovery system. A site plan must accompany the application. Each owner or operator is required to keep on-site files concerning maintenance and repair records of the vapor recovery system, inspection reports, compliance records, a list of facility representatives and the current facility representative training certificates, and monthly gasoline throughput records. Every five (5) years, or whenever a modification of the facility occurs, the owner or operator must apply for a new operating permit. The owner or operator of an exempted facility is required to apply for an exemption and is required to maintain an on-site file of the facility's monthly gasoline throughput during the previous two (2) years.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: An additional inspector will be needed for the Florence Regional Office. Additional training is also needed for existing inspectors and permitting engineers. Funds will be used to set up a computer database; to cover development of training materials, public information materials, and guidance for owners and operators, and division personnel; and to cover increased staff time devoted to maintaining records, conducting inspections, and responding to the public.

2. Continuing costs or savings: During the second year of implementation, another inspector will be needed. Funds will be used during the second and third years to continue implementing the Stage II program. Once the inspection and permitting demands have become stable, funds will be used to maintain the program.

3. Additional factors increasing or decreasing costs: The costs for developing and implementing the Stage II program were anticipated during the last budget cycle and were approved by the 1992 General Assembly.

(b) Reporting and paperwork requirements: Stage I permits will be combined with Stage II permit documents. For Boone, Kenton, and Campbell counties, this will increase the size of the documents and the database. For Boyd, Greenup, Bullitt, and Oldham counties, new permits will be needed for all affected facilities, and a new data base will be installed.

(3) Assessment of anticipated effect on state and local revenues: Costs of Stage II monitoring and enforcement will be covered by the general budget. After installation of controls, none of the affected gasoline dispensing facilities will pump enough gasoline to exceed the emissions fee-threshold amount of 25 tons annually. Therefore, these facilities will not be required to pay emission fees under present state statutes and regulations.

(4) Assessment of alternative methods; reason why alternatives were rejected: An exemption of independent small business marketers of gasoline (ISBMs) for facilities that have a gasoline throughput of 50,000 gallons per month or less is allowed by the CAAA. However, the CAAA also require that moderate ozone nonattainment areas reduce their VOC emissions by 15% by November 15, 1996. If only a smaller reduction is possible, the CAAA require the implementation of all measures that feasibly could be implemented in the area; otherwise, the area will be degraded to a serious ozone nonattainment status. Cabinet projections show that Kentucky is unlikely to obtain the required 15% reductions; therefore, no exemption has been allowed for ISBMs. The U.S. EPA has set no requirements for the persons installing or modifying Stage II systems. The cabinet added requirements for these persons because the owners and operators of affected facilities and the installers of Stage II vapor recovery systems in other states strongly recommended this approach.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict with other regulations.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict with other regulations.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. This regulation does not apply to a facility with an average monthly gasoline throughput of 10,000 gallons or less, if the owner or operator applies for and receives an exemption. As mandated in the CAAA, existing facilities can continue dispensing gasoline without installing Stage II recovery systems until the appropriate compliance date. Newly constructed facilities dispensing more than 10,000 gallons of gasoline per month must install Stage II systems from the beginning of their operation.

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. This administrative regulation will affect any gasoline dispensing facility owned by a local government agency if it has an average monthly throughput of 10,000 gallons or more.

3. State the aspect or service of local government to which this administrative regulation relates. The CAAA requires that every gasoline dispensing facility with a throughput of over 10,000 gallons of gasoline per month install a Stage II system. Thus, a facility owned by a local government which dispenses 10,000 gallons of gasoline or less per month must apply for an exemption, and a facility which dispenses more than 10,000 gallons of gasoline per month must install a Stage II vapor recovery system.

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 anticipated effect on the revenues of local governments.

Expenditures (+/-): If a local government becomes subject to this administrative regulation, then the local government would have the same expenses as a privately owned facility.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in the Clean Air Act as amended by the 1990 Clean Air Act Amendments (42 USC 7401 et seq.).

2. State compliance standards. KRS 224.10-100 requires the Cabinet for Natural Resources and Environmental Protection to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. 42 USC 7511a(b)(3) mandates that each state submit a revision to the State Implementation Plan (SIP) by November 15, 1992, to require gasoline dispensing facilities with a throughput of over 10,000 gallons per month install Stage II recovery systems after the effective date of the state regulation according to the following compliance schedule: (a) facilities constructed or modified since November 15, 1990, within six (6) months; (b) facilities with a throughput of at least 100,000 gallons per month, within one (1) year; and (c) all other facilities, within two (2) years following the effective date. 42 USC 7511a(b)(1)(A)(i) mandates that the state submit by November 15, 1993, a SIP revision to reduce by November 15, 1996, the VOCs in moderate ozone nonattainment areas by 15% from the 1990 baseline. The reductions due to the installation of Stage II will be included in the 15% reduction. The Technical Guidance -Stage II Vapor Recovery Systems (U.S. EPA, November 1991) (Stage II), Chapter 6; Enforcement Guidance for Stage II Vehicle Refueling Control Programs (U.S. EPA, December 1991) (EnfGuid), and the U.S. EPA Model Rule, dated August 17, 1992, set requirements for:

(a) Training of a facility representative for each facility.

(b) Data collection and maintenance at the regulated facilities and at the permitting authority.

(c) An initial compliance test, repeated every five (5) years.

(d) An annual inspection for each facility.

(e) An enforcement policy.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The cabinet has added the following requirements which are in addition to or are more stringent than the federal mandate:

(1) The persons installing Stage II systems must have some training before a permit to construct is issued.

(2) The manufacturers or distributors are required to offer training courses for facility representatives or to produce materials which may be used by the owner or operator to train facility representatives concerning the use of Stage II equipment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities. The additional standard in 4(1) above is imposed in order to maintain some assurance that the Stage II systems are properly installed. The additional standard in 4(2) is imposed in order to assure that appropriate training courses or material will be available to train facility representatives.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:050. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Petroleum Storage Tank Environmental Assurance Fund Commission to adopt regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This regulation defines essential terms used in connection with the regulations of the commission in this chapter. 1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund. This regulation repeals the prior regulations of the commission.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context terms in KRS Chapter 224 and in the Petroleum Storage Tank Environmental Assurance Fund Commission regulations shall have the meanings given in this regulation.

(1) " Assets" shall have the meaning in KRS 224.60-120(3);

(2) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(3) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;

(4) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(5) "Claim" shall have the meaning in KRS 224.60-115(4);

(6) "Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;

(7) "Corrective action" shall have the definition in KRS 224.60-115(5);

(8) "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(9) "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(10) "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes or storage of petroleum for use;

(11) "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(12) "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(13) "Entry level" means the amount of financial responsibility determined by the commission to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(14) "Extent of environmental harm" means the extent of

horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(15) "Facility" shall have the meaning in KRS 224.60-115(7);

(16) "Federal regulation" shall have the meaning in KRS 224.60-115(8);

(17) "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(18) "Guarantor" shall have the meaning in KRS 224.120(4);

(19) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(20) "Net worth" shall have the meaning in KRS 224.60-120(3);

(21) "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(22) "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

(23) "Nonretail facility" means a facility that does not sell petroleum products from petroleum storage tanks to the general public;

(24) "Occurrence" shall have the meaning in KRS 224.115(12);

(25) "Original invoice" means the original or a duplicate original of an invoice;

(26) "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(15);

(27) "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(17);

(28) "Ranking system" means the system for determining financial ability and extent of environmental harm established by these regulations;

(29) "Release" shall have the meaning in KRS 224.60-115(19);

(30) "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(31) "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(32) "Release detection" means determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it;

(33) "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the regulations of the cabinet;

(34) "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

Section 2. These definitions are intended to be consistent with the definition of terms in the waste management regulations and in applicable federal regulations.

Section 3. 415 KAR 1:010, 415 KAR 1:020, 415 KAR 1:030 and 415 KAR 1:040 are repealed.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: This proposed regulation contains definitions

for terms used in 415 KAR Chapter 1.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission prior to the effective date of this regulation pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)(a), (b), (d), (e) and (f) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility for the facility pursuant to 415 KAR 1:020 (1991) shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently or temporarily closed in compliance with 401 KAR 42:070;

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS

224.60-150; and

(f) Have demonstrated financial responsibility in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991);

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission a copy of the Eligibility and State Financial Responsibility Affidavit form dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

(3) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet within twenty-four (24) hours of the discovery of the release as required by 401 KAR 42:050. For the purpose of potential eligibility for the fund, in no event shall the report of the release be made to the cabinet more than thirty (30) days after discovery.

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at $10,000 per occurrence for taking corrective action and $10,000 per occurrence for compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action and $25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a direct or indirect controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from unregistered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility may be deemed ineligible to receive payment from the financial responsibility account in the event of a release if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation. An owner or operator may be determined eligible for payment of the costs of corrective action if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet. The owner or operator shall not be eligible for payment of the costs of third-party liability for releases occurring before the facility is brought back into compliance.

(3) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(4) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(5) A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.

(6) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) may be eligible to participate in the petroleum storage tank account for facilities that do not qualify for eligibility in the financial responsibility account if the eligibility requirements of 415 KAR 1:070 are met.

(7) Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is $1,500,000, or less, or the payment of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the payment of claims until the unobligated balance is greater than $1,500,000. Claims approved for payment by the commission at the time of suspension shall be paid in accordance with the date of final approval of the claims when the suspension is lifted.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed regulation provides the mechanism for tank owners to demonstrate financial responsibility as required in 40 CFR 280 Subpart H.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no

conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed before January 1, 1974 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(d) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the requirements of Section 2 of this administrative regulation are met;

(e) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(f) Costs of corrective action for releases from petroleum storage tanks removed from the ground after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(g) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22, 1988 may be eligible for payment by the petroleum storage tank

account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(h) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at this facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150; and

(c) Submit the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility from the petroleum storage tank account.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b), (c), (d), (e) and (f) of this Administrative Regulation. An owner or operator of a facility of the classes described in Section 1(1)(b), (c), (d), (e) and (f) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(g) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility, or to make a change in service to upgrade the petroleum storage tanks to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a substance until the upgrade is completed.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(h) of this Administrative Regulation. An owner or operator of facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1)(a) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility was a retail facility and the facility is permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility was a nonretail facility. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or

2. $25,000 for an owner or operator of six (6) or more tanks.

(2)(a) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(e) and (f) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility, or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or

2. $25,000 for an owner or operator of six (6) or more tanks.

(3)(a) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or more tanks; or

2. $25,000.for an owner or operator of six (6) or more tanks.

(4)(a) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.

(b) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:

1. $10,000 for an owner or operator of five (5) or less tanks; or

2. $25,000 for an owner or operator of six (6) or more tanks.

(5) An owner or operator of a nonretail facility who meets the requirement of 415 KAR 1:090, Section 3(2)(a) as to financial ability may request the commission to waive the payment of an entry level required by this section on the basis of financial hardship, if the facility is taken permanently out of service.

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for

which a claim is made.

(b) The commission may require an owner or operator to pay an entry level for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42, instead of making a determination that the facility is not eligible for participation as provided in paragraph (a) of this subsection.

(2) An owner, operator or contractor may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. The owner or operator shall pay an entry level under the provisions of Section 6(1)(b) of this administrative regulation if the owner or operator:

(1) Failed to provide a method of release detection as required by 401 KAR 42:040 by the applicable date; or

(2) Failed to report a release of petroleum at the facility to the cabinet within thirty (30) days of the initial detection; or

(3) Failed to implement initial abatement measures as required by 401 KAR 42:060 within twenty (20) days of confirmation of a release; or

(4) Failed to comply with the requirements of 401 KAR 42:060 during the performance of site investigation and corrective action; or

(5) Failed to comply with the maintenance and recordkeeping requirements of 401 KAR 42:030 or 42:040.

Section 8. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from unregistered tanks found during the performance of corrective for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 10. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed regulation provides the mecha-

nism for tank owners to demonstrate financial responsibility as required in 40 CFR 280 Subpart H.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

Section 1. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the bid proposal submitted to the owner or operator by the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Documentation to establish that the owner or operator has complied with the administrative regulations of the cabinet.

(2) Commission staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) Commission staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

(b) If the application is determined to be incomplete, commission

staff shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within fifteen (15) days of receipt of notice;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by commission staff, the claim shall be denied.

(4) The commission shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment and the amount of payment shall be obligated in the appropriate account.

Section 2. Assistance Agreement. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account may apply for an assistance agreement with the commission to guarantee the payment of eligible costs of corrective action.

(2) Application shall be made on the Assistance Agreement form dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met;

(b) A release from an eligible facility has occurred and has been reported to the cabinet;

(c) The owner or operator has obtained bid proposal for the performance of corrective action from at least three (3) contractors.

(3) If the owner or operator meets the requirements of subsection (2) of this section the commission shall enter into an assistance agreement and establish the amount to be obligated by the appropriate account based upon the approved bid. The assistance agreement may be used as a guarantee of payment to a contractor performing corrective action to the extent of the approved amount.

(4) The assistance agreement may be amended upon application by the eligible owner or operator upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action, and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the commission.

(5) Payment under the terms of the assistance agreement may be made when the eligible owner or operator submits original invoices of costs incurred under the terms of the approved bid, and the submittal of the certification by the contractor that the costs were consistent with the bid, and necessary to comply with the administrative regulations of the cabinet.

Section 3. Signatures. (1) A claim form or an application for an assistance agreement shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

Section 4. Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 415 KAR 1:110;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied;

(d) The claim is received within one (1) year from completion of the work for which payment is sought.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 5. Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(2) Requests for payment under an assistance agreement may be submitted sixty (60) days following initiation of corrective action, and at sixty (60) days intervals thereafter until completion of the authorized activities. Upon request, the commission may approve interim payments at more frequent intervals. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(3) All payments shall be subject to approval of the commission.

Section 6. Payment Procedures. (1) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in an assistance agreement.

(2) Prior to payment being issued, the eligible owner or operator shall verify that an amount equal to the entry level has been paid by the owner or operator.

Section 7. Eligible Costs. Payment for costs of corrective action shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Removal, treatment, and disposal of petroleum contamination from petroleum storage tank systems, groundwater, and soils contaminated by a release from the petroleum storage tank system;

(d) Performance of site checks, and site investigation to assess the extent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet;

(e) Preparation of corrective action plans;

(f) Necessary monitoring of the environment performed pursuant to the direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(g) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system;

(h) Restoration or replacement of a private or public drinking water supply;

(i) Removal, treatment, dispose of contaminated liquids and soils

resulting from corrective action;

(j) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(k) The costs of implementation of corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems if approved by the cabinet;

(l) Costs for replacing of blacktop or concrete if removal was necessary to perform the corrective action;

(m) Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(n) Other costs requested by the applicant and approved by the commission, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs, earth moving equipment, and pumps;

(d) Loss of business, income or profits;

(e) Attorneys fees unless demonstrated to be integral to the performance of corrective action;

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interests on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services.

Section 8. Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 9. Subrogation. Prior to making payment of a claim, the commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed regulation establishes general eligibility requirements for financial assistance from the petroleum storage tank account of the Petroleum Storage Tank Environmental Assurance Fund.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no

conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:090. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the commission to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the commission shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the study to be performed for the commission pursuant to KRS 224.60-137 and the administrative regulations to be adopted by the cabinet to establish standards for corrective action for release into the environment from a petroleum storage tank.

(2) Until the study is completed and the administrative regulations establishing standards for corrective action required by KRS 224.60-137 have been adopted by the cabinet, priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a drinking water supply in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level;

(b) Second, where the release of petroleum poses a direct threat of contamination to a drinking water supply due to the hydrogeologic characteristics of the facility and the surrounding area, the proximity, quality and current or future uses of nearby surface and groundwater, and the potential for migration of the petroleum constituents, and contamination of the drinking water supply is very likely to occur unless corrective action is immediately undertaken;

(c) Third, where the release of petroleum has contaminated off-site property and poses a threat to human health or the environment.

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.

Section 2. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the commission shall consider the following factors:

(a) Whether the facility is owned by a public or private person. Publicly owned facilities shall have the least priority for payment from the petroleum storage tank account;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility.

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 3. Demonstration of Ability to Pay Entry Level. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit to the commission the last five (5) years of income tax returns for the person, partnership or corporation. (2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to an individual, partnership or corporation whose:

(a) Average net income for the five (5) year period is less than $50,000 shall be given first priority;

(b) Average net income for the last five (5) years is less than $100,000 but more than $50,000 shall be given second priority;

(c) Average net income for the last five (5) years is more than $100,000 shall be given third priority.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) The commission may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The commission shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid second;

(3) An owner or operator of a facility that meets the conditions of Section 1(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(c) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 1(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 1(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of facility that meets the conditions of Section 1(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(a) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 1(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 3(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) Claims in categories (1) through (7) shall be paid in order of the date of receipt of the claim;

(9)(a) All other claims of private persons for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 3 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than $100,000 is not required to submit income tax returns;

(10) Claims from the Commonwealth of Kentucky, a political subdivision of the state, a commission, or a municipality shall have their claims paid last in order of the date of receipt of the claim.

Section 7. Payment of Certain Classes of Claims. The commission may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent

to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government:

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed regulation establishes general eligibility requirements for financial assistance from the financial responsibility account of the Petroleum Storage Tank Environmental Assurance Fund.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsi-

bility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:100. Third party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 or received a certificate of eligibility pursuant to 415 KAR 1:020 (1991) prior to the effective date of this administrative regulation, and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims, including claims for bodily injury and property damage and damage to natural resources, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Commission. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the commission of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and approved by the commission.

(3) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the commission.

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third party after approval of payment by the commission.

(3) The amount of payment of all third-party claims caused by a release shall not exceed $1,000,000.

(4) The commission shall acquire by subrogation the right of the third party to recover the amount of damages paid to the third party from the person responsible or liable for the release.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed administrative regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will

be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed administrative regulation establishes general eligibility requirements for financial assistance from the financial responsibility account of the Petroleum Storage Tank Environmental Assurance Fund.

(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 in conflict with the proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This administrative regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed administrative regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal administrative regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ If yes, complete questions 2-4.

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:120. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130(2)(c) requires the commission to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Requests for Hearing. (1) Any person aggrieved by a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The hearing may be conducted by the commission, the executive director or a hearing officer designated by the commission.

The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had such notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(2) The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought. The standard to meet the burden is a preponderance of the evidence.

Section 3. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation agreed settlement, consent order, or default for nonappearance.

Section 4. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) It is within the hearing officer's discretion to require official transcripts, or to set up other procedures for taking evidence including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or issue its own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the courts of jurisdiction.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: November 2, 1992

FILED WITH LRC: November 5, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 21, 1992, at 10 a.m. in Room 127, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by December 16, 1992 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Contact person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: Tank owners or operators are financially responsible for $10,000 or $25,000, dependent upon the number of tanks, rather than $1,000,000 of financial responsibility for cleanup of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain, and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY '92 administrative budget was $436,600. The commission is in the process of hiring support staff to assist in administering the program as amended by HB 647, 1992 Kentucky Acts Chapter 450.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process claim forms. The commission will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 647, codified at KRS 224.60-120 through 224.60-140, expanded the coverage of the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by federal regulations and provide reimbursement to owners or operators for corrective action expenses and third-party damages.

Alternative: Less Stringent: The commission cannot be less stringent and maintain authorization to administer the program.

More Stringent: The commission cannot be more stringent than state statutes.

Present Proposal: The proposed regulation establishes general eligibility requirements for financial assistance from the financial responsibility account of the Petroleum Storage Tank Environmental Assurance Fund.

(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 in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Is tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third party for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1992 General Assembly enacted House Bill 647 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. House Bill 647, codified at KRS 224.60-120 through 224.60-140, expanded the Petroleum Storage Tank Environmental Assurance Fund. This fund shall be administered by the Petroleum Storage Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third-party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at 40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

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 any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

(3) State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third-parties for bodily injury and property damage caused by accidental releases. KRS 224.60-120 through 224.60-140 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

(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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of $10,000 or $25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 Chapter 42, the Petroleum Underground Storage Tank Assurance Fund may be used to cover corrective action and third-party liability expenses. Although there is an entry level payment, extensive savings will be realized by local government for corrective action and third-party liability expenses.

JUSTICE CABINET
Department of Corrections

501 KAR 2:020. Definitions.

RELATES TO: KRS 196.035, 197.020, 532.100
STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100
NECESSITY AND FUNCTION: To provide adequate information

and guidance on the housing of Class D felons in county jails.

Section 1. Definitions. As used in this document, the following definitions shall apply:

(1) "Assessment/classification center (A/C center)", see CPP 17.3.

(2) "Class D felon" means an inmate convicted of a Class D felony with an indeterminate sentence of five (5) years or less which is not a sexual offense enumerated in KRS 197.410(1) and who was sentenced after July 13, 1992.

(3) "Classification branch manager", see CPP 18.6.

(4) "Community center program manager", see CPP 25.6.

(5) "Educational good time", see CPP 15.3 and CPP 20.1.

(6) "Escape", see KRS 520.010.

(7) "Forfeited good time", see CPP 25.6.

(8) "Furlough", see CPP 25.4.

(9) "Jail", see KRS 441.005(1).

(10) "Meritorious good time", see CPP 25.6.

(11) "Minimum custody", see CPP 18.5.

(12) "Medium custody", see CPP 18.5.

(13) "Statutory good time", see CPP 25.6.

(14) "Waiver" means that a county is exempt from housing any Class D felons.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: Minimal; if jail does not have camera for I.D. photos, county would have to purchase one. However, state will pay counties a $23.75 per diem for each inmate housed.

2. Continuing costs or savings: State will pay per diem on an ongoing basis.

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

(b) Reporting and paperwork requirements: Counties which house inmates will be required to process certain documents outlined in the regulation.

(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: Since fewer felons would be housed in the state prison system, some long-term capital construction cost savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to process documents outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: Will increase local revenues in participating counties.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in 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:

(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. 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

501 KAR 2:030. Purpose.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation sets forth the purpose of this program and the division responsible for the administration of the program.

Section 1. Purpose. (1) The overall thrust of the program is the diversion of Class D felons from the state prison system.

(2) These inmates shall serve their felony sentences in county jails unless the county has received a waiver from the department.

(3) This program shall be administered by the Division of Local Facilities.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: Minimal; if jail does not have camera for I.D. photos, county would have to purchase one. However, state will pay counties a $23.75 per diem for each inmate housed.

2. Continuing costs or savings: State will pay per diem on an ongoing basis.

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

(b) Reporting and paperwork requirements: Counties which house inmates will be required to process certain documents outlined in the regulation.

(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: Since fewer felons would be housed in the state prison system, some long-term capital construction cost savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to

process documents outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: Will increase local revenues in participating counties.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in 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:

(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. 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

501 KAR 2:040. Waivers.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide the process for counties to request waivers from the department for housing Class D felons in county jails.

Section 1. Request for Waivers; Effect of Waivers. (1) Counties which do not want to house Class D felons shall request a waiver in writing from the commissioner of the department who shall automatically grant the waiver.

(2) The waiver request shall be signed by both the county judge executive and jailer.

(3) The wavier shall remain in effect until the county notifies the department in writing to terminate the waiver.

Section 2. Controlled Intake. (1) Class D felons in these counties with waivers shall be considered controlled intake inmates and be processed through the A/C center in accordance with CPP 17.3.

(2) Upon transfer to the A/C center, Class D felons convicted in counties granted waivers shall have their names placed on a waiting list for placement in another jail by the community center program manager.

(3) The only exceptions shall be inmates who entered into plea agreements with the courts in order to serve their sentence in the county jail. These inmates shall serve their sentences in the county jail and shall be processed in accordance with procedures outlined in 501 KAR 2:060. The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons when space is available.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: Minimal; if jail does not have camera for I.D. photos, county would have to purchase one. However, state will pay counties a $23.75 per diem for each inmate housed.

2. Continuing costs or savings: State will pay per diem on an ongoing basis.

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

(b) Reporting and paperwork requirements: Counties which house inmates will be required to process certain documents outlined in the regulation.

(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: Since fewer felons would be housed in the state prison system, some long-term capital construction cost savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to process documents outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: Will increase local revenues in participating counties.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in 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:

(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. 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

501 KAR 2:050. Transfer requests.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is needed to provide the process for eligible counties to request transfer of Class D felons from county jails to the state prison system.

Section 1. Eligibility. Counties not requesting waivers shall be eligible to house qualified Class D felons unless the department through its minimum jail standards enforcement procedures outlined in KRS 441.075 orders a county jail to cease housing Class D felons.

Section 2. Transfer Requests. (1) Counties not seeking waivers may request the department to have a Class D felon transferred to the state system if one (1) or more of the four (4) conditions enumer-

ated in KRS 532.100 are present. The county jailer shall request the transfer on a "Request for Transfer" form incorporated herein by reference. The form shall be submitted to the Division of Local Facilities, who shall review the form and forward it with a recommendation to the commissioner.

(2) The commissioner or his designee shall approve or deny the request.

(a) If approved, a copy of the form shall be forwarded to the A/C center so that a transfer can be arranged.

(b) If the commissioner denies the request, a copy of the form shall be returned to the jailer who may follow the appeal process cited in KRS 532.100(5).

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: Minimal; if jail does not have camera for I.D. photos, county would have to purchase one. However, state will pay counties a $23.75 per diem for each inmate housed.

2. Continuing costs or savings: State will pay per diem on an ongoing basis.

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

(b) Reporting and paperwork requirements: Counties which house inmates will be required to process certain documents outlined in the regulation.

(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: Since fewer felons would be housed in the state prison system, some long-term capital construction cost savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to process documents outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: Will increase local revenues in participating counties.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in 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:

(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. 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

501 KAR 2:060. Procedures for housing of Class D felons.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide procedures for the housing of Class D felons in county jails.

Section 1. Submission of Documents. In county jails housing Class D felons, the jailer shall forward to the A/C center the following documents within ten (10) working days of receipt of the judgment on all Class D felons for whom a transfer has not been requested:

(1) Pictures with negative;

(2) Fingerprints;

(3) Detainers;

(4) Incident and disciplinary reports;

(5) Body I.D. sheet.

Section 2. Custody Assignment. (1) The A/C center staff shall, within ten (10) working days of receipt of the documents, review the inmate file and assign a custody to the Class D felon.

(2) The inmate file shall be forwarded to Offender Records Section, Central Office, which shall audit the file within five (5) working days of receipt.

(3) The section shall forward the file to the Director of Local Facilities who shall notify the jailer of the custody assignment.

(4) If the custody assigned is minimum or community, the Class D felon may participate in programs offered outside the jail in accordance with the following terms: community service work program under the direct supervision of an assigned individual who shall complete any training programs specified by the department.

(5) If the custody assigned is medium, the Class D felon shall not be released from the jail.

Section 3. Preparole Progress Reports. Probation and parole staff assigned to work with the county jail shall prepare preparole progress reports on Class D felons as outlined in CPP 18.10.

Section 4. Transportation. Jail staff shall be responsible for the transportation of Class D felons except as specified in KRS 431.215 and 441.510.

Section 5. Release Procedures. (1) The release of Class D felons shall follow the procedure outlined in CPP 25.6.

(2) Jail staff shall not release a Class D felon to another state or to federal authorities without advance notice to the Director of Local Facilities.

(3) Jail staff shall notify the Director of Local Facilities or the A/C center of any detainers or holds lodged against the Class D felon by another jurisdiction.

(4) No Class D felon shall be released to the custody of another state or to federal authorities without approval from the Department of Corrections or the Office of the Governor.

Section 6. Furlough Program. (1) The authority and responsibility of monitoring and granting furloughs shall be the responsibility of the community center program manager.

(2) Eligibility for furloughs shall be determined as follows:

(a) Furloughs of Class D felons shall be a privilege, not a right.

(b) Class D felons who are minimum custody shall be eligible to be considered for a forty-eight (48) hour furlough each quarter not to

exceed eight (8) furlough days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(c) Class D felons who are community custody shall be eligible to be considered for a forty-eight (48) hour furlough every thirty (30) days after their initial furlough.

(d) All Class D felons shall have spent at least sixty (60) days in the county jail since the date of the custody assignment prior to being considered for a furlough.

(e) No Class D felons on whom a felony detainer has been received shall be eligible for a furlough.

(f) Class D felons receiving more than a one (1) month deferment at a Parole Board hearing shall wait an additional thirty (30) days from the date of the deferment before being eligible for a furlough.

(g) Inmates and their families shall show evidence of an ability and willingness to pay all expenses while on furlough.

(h) Inmates shall indicate their destination and means of transportation on their application.

(i) Overnight furloughs shall be allowed to verified family members only.

(j) Any requested exceptions shall have the community center program manager's approval and shall be presented with specific written justification. Applications shall follow procedures outlined in CPP 25.6.

Section 7. Escape. Escape procedures to be followed are cited in CPP 25.6.

Section 8. Medical Needs. Medical needs of Class D felons shall follow the procedures cited in CPP 25.6.

Section 9. Work Projects. Utilization of Class D felons for work projects shall follow the procedures cited in CPP 25.6.

Section 10. Good Time. Statutory and meritorious good time shall follow procedures outlined in CPP 25.6.

Section 11. Monthly Reports. Monthly reports shall follow procedures outlined in CPP 25.6.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: Minimal; if jail does not have camera for I.D. photos, county would have to purchase one. However, state will pay counties a $23.75 per diem for each inmate housed.

2. Continuing costs or savings: State will pay per diem on an ongoing basis.

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

(b) Reporting and paperwork requirements: Counties which house inmates will be required to process certain documents outlined in the regulation.

(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: Since fewer felons would be housed in the state prison system, some long-term capital construction cost savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to process documents outlined in the regulation.

(3) Assessment of anticipated effect on state and local revenues: Will increase local revenues in participating counties.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in 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:

(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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 3:245. School council allocation formula.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: KRS 160.345(8) mandates that the State Board for Elementary and Secondary Education adopt a formula by administrative regulation which guides the way in which school district funds shall be allocated to each school council. 702 KAR 3:240 is no longer required because it is being replaced by 702 KAR 3:245.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority.

(2) "Instructional supplies, materials, travel, and equipment" means the following codes, as set forth in the "Kentucky School Financial Accounting System," which is incorporated by reference in 702 KAR 3:120:

(a) Library books - codes: 251.01, 251.04, 252.01, 252.04;

(b) Periodicals and newspapers - codes: 253.01, 253.04, 254.01;

(c) Library supplies - codes: 255.01, 255.03, 256.01, 256.03;

(d) Audio visual material and equipment - codes: 257.01, 257.04, 258.01, 258.04;

(e) Supplementary books - codes: 263.01, 263.04, 264.01, 264.04;

(f) Teaching supplies to include paper products - codes: 265.01, 266.01;

(g) Instructional equipment other than computer laboratories - codes: 231, 741.01, 871.01, 1272; and

(h) Instructional travel - code: 267.

"Instructional supplies, materials, travel, and equipment" shall not mean technology related expenditures for computer laboratories, the initial inventory of a new school plant, and any one (1) time expenditures that the district made to address specific school needs.

(3) "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in noncategorical programs in the district.

Section 2. The local school district shall provide to school councils established by January 30 an allocation for the next budget year by March 1 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils by excluding the proposed district-wide expenditures for the following areas from the draft district budget:

(1) The 100 Expenditure Series, Administration.

(2) Any instructional service provided to all schools from the district level or for "categorical programs" of the 200 Expenditure Series, Instruction.

(3) The 300 Expenditure Series, Attendance.

(4) The 400 Expenditure Series, Health Services.

(5) The 500 Expenditure Series, Transportation.

(6) The 600 Expenditure Series, Operation of Plant, except for noncategorical personnel assigned to schools.

(7) The 700 Expenditure Series, Maintenance of Plant, except for code 741.01 Replacement of Instructional Equipment.

(8) The 800 Expenditure Series, Fixed Charges, except for fringe benefits for noncategorical personnel assigned to schools.

(9) The 900 Expenditure Series, School Food Services.

(10) The 1100 Expenditure Series, Community Services.

(11) The 1200 Expenditure Series, Capital Outlay, except for the funds that may be set aside in an allocation for new instructional equipment and code 1272 instructional equipment designated for each school.

(12) The 1300 Expenditure Series, Debt Service.

(13) The 1400 Expenditure Series, Below the Line.

Section 4. Allocation for Certified Staff. (1) Local boards shall establish a certified staffing policy to determine the allocation of certified staff to local schools.

(2) To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in subsection (1)(a) that are generated by the local board certified staffing policy.

(3) Funds shall be allocated based on the previous year's actual 185 day salary and associated fringe benefits except sick, personal, or emergency leave adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary and associated fringe benefits except sick, personal, or emergency leave adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

Section 5. Allocation for Classified Staff. (1) Local boards shall establish a classified staffing policy to determine the allocation of classified staff to local schools.

(2) Funds shall be provided for all school based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class and associated fringe benefits except for sick, personal, or emergency leave for noncategorical staff adjusted for any district-wide increase.

(5) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

Section 6. Instructional Supplies, Materials, Travel, and Equipment. (1) For instructional supplies, materials, travel, and equipment school councils shall receive an allocation based on the prior year district average expenditure adjusted by the current year's percent change in Support Education Excellence in Kentucky (SEEK) funding for each pupil based on the projected full-time equivalent enrollment.

(2) The amount generated in subsection (1) of this section shall be adjusted utilizing the enrollment data at the end of the second school month.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed in one (1) of the following manners:

(a) An amount per projected full-time equivalent enrollment;

(b) Based on pupil needs as designated by the local school board;

(c) A combination of subsections (a) and (b) of this section.

(2) If Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets.

Section 10. No school council allocation by the district shall result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. Nothing in this administrative regulation shall prohibit districts from passing on to school councils any reduction in state and local revenues.

Section 12. 702 KAR 3:240, School council funding formula, is hereby repealed.

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 of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Griesser
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): 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: Consideration was given to a dollar amount per student; however, it would not have adequately recognized the cost differential between schools.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Is 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services

704 KAR 7:110. School council policy rejection; appeal procedure.

RELATES TO: KRS 160.345
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: School council policies in the areas set out in KRS 160.345(2)(j)(1-8), the school-based decision making statute, are generally not subject to approval or rejection by a board of education. This administrative regulation is necessary to establish standards in those limited circumstances in which a board of education rejects a school council policy in one (1) of the eight (8) areas. The function of this administrative regulation is to establish standards and a process for policy rejection and provides for an appeal process.

Section 1. To the extent school council policies are outside the areas set out in KRS 160.345(2)(j)(1-8), they shall be consistent with district board policies, unless otherwise agreed to by the district board of education and the school council.

Section 2. The school council shall make decisions in the areas set out in KRS 160.345(2)(j)(1-8). The district board of education may reject a school council policy in one (1) of these areas only to the extent it is inconsistent with:
(1) State or federal statutes or regulations (if a waiver is not applicable);
(2) Concerns for health and safety;
(c) Concerns for liability;
(4) Available financial resources; or
(5) Contractual obligations to personnel and other providers of goods and services.

Section 3. If the local board of education rejects a policy pursuant to Section 2 of this administrative regulation, the board shall return the policy to the school council for reconsideration. The board shall provide a specific written explanation of the alleged inconsistency accompanied by the policy document and a copy of the law, contract, or other provision upon which the district board's action is based.

Section 4. If the board of education and the school council are unable to resolve the dispute regarding the school council policy, the board or the school council may submit the matter in writing to the commissioner of education for resolution. Upon receipt of the written request for resolution, the commissioner shall:
(1) Provide a copy of the written request to the other party to the dispute;
(2) Provide notice to the other party to the dispute that it may file with the department an explanation of its position in the matter within twenty (20) days after receipt of the notice; and
(3) Issue his binding decision within thirty (30) days after the deadline for the filing of the response to the appeal.

Section 5. Within thirty (30) days after issuance of the commissioner's decision, the local board or school council may file a written appeal of the decision with the State Board for Elementary and Secondary Education. The state board shall:
(1) Provide a copy of the appeal to the other party to the dispute;
(2) Provide notice to the other party to the dispute that it may file with the state board a response to the appeal within twenty (20) days after receipt of the notice; and
(3) Make its binding decision on the appeal at its next regularly scheduled meeting.

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 of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 December 17, 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 written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kevin Noland

(1) Type and number of entities affected: 176 boards of education and approximately 600 SBDM school councils.

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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Appeals may go to commissioner of education and then to SBESE.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Confusion as to school council authority and lack of mechanism to resolve disputes as to rejection of school council policies has been impediment to successful SBDM; the proposed regulation appears to be best alternative.

(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: Is tiering applied? No. The proposed regulation applies equally to all school districts and SBDM school council.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.260 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge, and KRS 342.735 requires the board to establish regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the resolution of medical fee disputes before the administrative law judges.

Section 1. Procedure. (1) Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a Request to Resolve Medical Fee Dispute (Form 112).

(2) A Request to Resolve Medical Fee Dispute (Form 112) may be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work-relatedness of any medical expense, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(3) A Form 112, copies of disputed bills and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner, with sufficient copies to serve all other parties, within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. The commissioner shall serve copies on all named parties unless an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, in which event service shall be made by the movant. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(4) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign the request to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge to whom the application for adjustment of claim has been assigned.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law and shall initially be placed upon the Frankfort administrative law judge motion docket. Service shall be made upon all opposing parties by the movant.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

Section 3. Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee or provider of medical services, while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which

shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute.

(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.

Section 4. Forms. (1) Revised Form 112 is adopted by order of the Workers' Compensation Board effective October 26, 1992, and is incorporated by reference in this regulation.

(2) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001.

5. Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: October 26, 1992

FILED WITH LRC: November 13, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on December 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie Salven

(1) Type and number of entities affected: Employers, employees, insurers, and providers of medical services involved in workers' compensation medical fee disputes. It is estimated that 700 of these disputes are filed in a year.

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

1. First year: Most provisions of this regulation were previously contained in 803 KAR 25:011, Section 26, and will for that reason not create new costs or savings. Some savings should result from use of simplified procedure to resolve some medical fee disputes after a formal application for adjustment of claim has been filed. Additional savings will result from use of the new provision permitting challenges to similar or future bills to be made in a single request.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: Increased use Form 112.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs to agency may result from need to process greater number of Form 112's.

2. Continuing costs or savings: Use of Form 112 should save time for administrative law judges as a result of simplified procedure.

3. Additional factors increasing or decreasing costs: An additional employee may be needed to process Form 112's in the Department of Workers' Claims.

(b) Reporting and paperwork requirements: See discussion above.

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

(4) Assessment of alternative method; reasons why alternatives were rejected: Use of nonstandard, elaborate pleadings in medical fee disputes is more time consuming and expensive for parties and administrative law judges.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: Duplication of 803 KAR 25:011, Section 26 is being eliminated by amendment to 803 KAR 25:011.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: See above.

(6) Any additional information or comments: None.

TIERING: Is tiering applied? (Explain why tiering is or is not applied) Yes. Medical fee disputes are assigned and handled differently if an application for adjustment of claim has been filed, an award has been rendered, or an appeal is pending.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:095. Statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.430, 342.735

NECESSITY AND FUNCTION: KRS 342.260 permits the Workers' Compensation Board to promulgate regulations not inconsistent with KRS Chapters 13A or 342 for carrying out the provisions of the Workers' Compensation Act, and KRS 342.430 requires the board to prepare and furnish forms necessary for the efficient administration of the Workers' Compensation Act. KRS 342.735 requires the board to establish regulations to expedite the payment of medical expense benefits. KRS 342.020 requires an employer, or insurer on behalf of the employer, to make all payments for medical services within thirty (30) days of receipt of a "statement for services." The function of this administrative regulation is to define what constitutes a "statement of services" requiring payment or challenge within thirty (30) days under KRS 342.020. Balance billing of employees is prohibited since all payments required for treatment under KRS 342.020 are to be made by employers or insurance carriers.

Section 1. Definitions. (1) "Statement for services" means, for the purposes of KRS 342.020(1), a completed Form HCFA 1500 or in the case of a hospital a completed Form UB-82, or successors to such forms prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached.

(2) "Kentucky Workers' Compensation Medical Provider's Certification" means a certification signed by the provider of medical services or supplies having the following content:

KENTUCKY WORKERS' COMPENSATION MEDICAL PROVIDER'S CERTIFICATION

The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82 or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work-related injury or occupational disease.

Medical Provider Date

Section 2. Payment or Challenge of Statements for Services. (1) Payment to a provider of medical services or a challenge to the compensability of medical services under the Kentucky Workers' Compensation Act shall not be required, and the thirty (30) day payment period of KRS 342.020 shall not commence to run:

(a) Until the employer or its payment obligor has received a substantially complete statement for services including the Kentucky Workers' Compensation Medical Provider's Certification;

(b) During such period as the employee refuses to execute the medical information release required by KRS 342.020(4);

(c) During such period as a medical provider fails to respond to a reasonable information request served by the employer or its medical payment obligor under KRS 342.020(4);

(d) During such period as the employee's designated physician fails to provide a treatment plan when required by 803 KAR 25:096.

(2) In the event payment of a statement for services is delayed by the occurrence of any of the events set forth in subsection (1) of this section, the employer or its medical payment obligor is granted twenty (20) days after the receipt of a substantially complete statement for services, medical information release, response to a reasonable request for information, or a "treatment plan" as defined in 803 KAR 25:096 in which to either make payment or file a Request to Resolve Medical Fee Dispute (Form 112).

(3) Should the employer or its medical payment obligor fail to make payment by reason of the occurrence of any of the events of subsection (1) of this section, written notice setting forth the reason for nonpayment shall be promptly sent by mail to the medical provider and employee.

(4) If the medical provider renders a statement for services containing charges in excess of those provided in an applicable fee schedule adopted by the board, the employer or its medical payment obligor may make payment in the scheduled amount and serve written notice to the medical provider of the reason for refusing to pay a greater amount. The notice shall include a specific explanation of the manner in which a fee schedule was applied to reduce the charge contained in the statement for services. The medical provider may dispute such payment in accordance with 803 KAR 25:012, provided that the request to resolve medical fee dispute is filed within twenty (20) days of receipt of a written notice of refusal to pay the full amount charged.

Section 3. Balance Billing. (1) No provider of workers' compensation medical services or treatment, or agent, servant, employee, assignee, employer or independent contractor acting on behalf of any workers' compensation medical provider shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge for services covered by KRS 342.020 in excess of that provided by a fee schedule adopted by the board, nor cause the credit of any workers' compensation patient to be impaired by reason of the patient's failure or refusal to pay the excess charge.

(2) If only a portion of the charges contained on a statement for services is reasonably disputed by an employer or medical payment obligor, the balance upon which there is no dispute shall be paid in a timely manner as provided in KRS 342.020.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: October 26, 1992

FILED WITH LRC: November 13, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on December 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie Salven

(1) Type and number of entities affected: This regulation will affect medical providers, insurance carriers, and self-insured employers in workers' compensation cases. During fiscal year 1990-1991, the Department of Workers' Claims processed nearly 70,000 Employer's First Reports of Injury. This regulation will apply whenever an employee covered by the Workers' Compensation Act receives medical services or treatment for a work-related injury.

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

1. First year: Use of the Kentucky Workers' Compensation Medical Provider's Certification by medical providers in the first year may result in some additional costs to medical providers until they have adapted to use of the new form. Insurance carriers and self-insured employers should realize some savings during the first year because the certification will enable insurance carriers and self-insured employers to determine the compensability of more claims based solely on a review of the paperwork.

2. Continuing costs or savings: After the first year, insurance carriers and self-insured employers should continue to realize savings in the processing of claims as the result of a reduced need for investigation beyond the paperwork supplied by the medical provider. Medical providers should benefit by receiving prompt payment in workers' compensation cases.

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

(b) Reporting and paperwork requirements: Medical providers will be required to use the Kentucky Workers' Compensation Medical Provider's Certification and to attach it to all workers' compensation statements for services to certify that reasonable grounds exist to seek payment of all items included in the statement under the workers' compensation laws.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of printing copies of the Kentucky Workers' Compensation Medical Providers' Certifications, for those medical providers who do not prepare their own certificates, are estimated at not more than $1,000.

2. Continuing costs or savings: Continuing costs for printing the certification forms should not exceed $1,000 a year. There may be

some savings if use of the new form results in fewer disputes over medical fees being filed with the Department of Workers' Claims.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: The Department of Workers' Claims will print and make available the Kentucky Workers' Compensation Medical Providers' Certificates, but agency personnel will not be required to "process" this new form since it is to be submitted by the medical provider directly to an insurance carrier or self-insured employer.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative method; reasons why alternatives were rejected: An alternative method would be to create an entirely new billing form for medical providers, but questions have been raised as to whether such a requirement would violate KRS 304.14-135.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflicts known. The section on "balance billing" is similar to a provision contained in the Kentucky Medical Fee Schedule which is incorporated by reference in 803 KAR 25:090.

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

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

(6) Any additional information or comments: None.

TIERING: Is tiering applied? No. All affected entities receive equal treatment.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of this administrative regulation is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months.

(b) Medical treatment that in fact continues for a period of more than three (3) months.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. As soon as practicable after receiving notice of the occurrence of a work-related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers' Claims.

Section 3. Employee Selection of Physician. (1) All treatment for a work related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician." The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1) time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's prior written consent. Such consent shall not be unreasonably withheld.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work related injury or disease an employee has been placed under long-term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include manipulations, adjustments, electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding thirty (30) days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; the time frame in which such treatment shall continue; and a plan by which such treatment shall terminate in the absence of improvement in the physical condition of the employee.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the

employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Workers' Compensation Physician Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this regulation by reference.

(2) Information available. Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: October 26, 1992

FILED WITH LRC: November 13, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on December 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This regulation will affect workers' compensation patients and their medical services providers when work-related injuries or diseases cause the patients to be off work for more than sixty (60) days, or the treatment lasts for more than three (3) months or when elective surgery is requested. The exact number of cases affected cannot be precisely estimated, but is probably greater than the approximately 10,000 claims per year currently being litigated. Workers' compensation patients who wish to change designated physicians more than once will be affected, and this number is probably included in the 10,000 litigated claims per year.

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

1. First year: This regulation is anticipated to result in some increase of costs to physicians, chiropractors and others who are required to prepare treatment plans. The fact that treatment plans may consist of charts, reports or other documents generated by medical service providers independently of the requirements of their regulation should minimize such costs. Another indirect cost is the extra time needed by the practitioner's office staff to mail the treatment plans and the additional postage required. Savings should result from medical care providers receiving payment more promptly in some cases. It is anticipated that the requirement of a treatment plan will result in savings to medical payment obligors because it will cause the designated physician to give a detailed explanation of the proposed course of treatment of the workers' injury to the medical payment obligor. This will allow the payment obligor to review, with expert assistance, the proposed plan to ensure the treatment is appropriate. Limitation on the patient's change of designated physician more than once without consent will save the medical payment obligor the time and expense of reviewing multiple or successive proposals for treatment.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: This amendment will increase medical service providers' reporting and paperwork requirements slightly. Medical practitioners should only need to slightly expand their existing office notes to create treatment plans for submission to the medical payment obligors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of printing the Kentucky Workers' Compensation Physician Designation and Medical Release Card are estimated at not more than $2,500.

2. Continuing costs or savings: After the first year, printing costs should drop if insurance carriers begin printing their own cards.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No changes anticipated.

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

(4) Assessment of alternative method; reasons why alternatives were rejected: The alternative is to allow the parties to litigate each question that arises regarding course of treatment and frequent changes in treating physicians without requiring information to be provided to employers and medical payment obligors that might obviate the need for such litigation. KRS 342.735 requires the board to promulgate regulations designed to expedite payment of temporary total disability and medical expense benefits.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

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

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

(6) Any additional information or comments: None.

TIERING: Is tiering applied? No. This regulation is applicable to all workers whose injuries or diseases are covered under the Kentucky Workers' Compensation Act and who require long-term medical care or who wish to change designated physicians more than once, and their medical services providers.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health

902 KAR 10:045. Tattoo studio sanitary procedures.

RELATES TO: KRS Chapter 211, 211.760, 211.990

STATUTORY AUTHORITY: KRS 194.050, Chapter 211, 211.760

NECESSITY AND FUNCTION: KRS 211.760 requires tattoo studios to register with local health departments and directs the Cabinet for Human Resources to promulgate administrative regulations relating to health and cleanliness of places of business, sterilization of tattooing apparatus, procedures to prevent the spread of disease and other administrative regulations as may be necessary to protect public health. The function of this administrative regulation is to set forth the standards required by KRS 211.760.

Section 1. Definitions. (1) "Adequate ventilation" shall mean a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

(2) "Minor" shall mean any person under the age of eighteen (18) years.

(3) "Tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(4) "Tattoo studio" shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

(5) "Antibacterial solution" means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

(6) "Germicidal solution" means any solution which destroys germs, and is so labeled.

(7) "Sterilization" means holding in an autoclave for twenty-five (25) minutes, at fifteen (15) pounds pressure, at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius.

Section 2. Studio Sanitation. (1) The tattoo artist's hands shall be washed and then air blown or dried by single-use towel prior to beginning work on each person or when interrupted in the process. In addition, disposable, latex examination gloves shall be worn during the tattooing process. The gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.

(2) Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon, and stencils shall be provided for each operator and shall be maintained in a sanitary manner, which protects them from contamination.

(3) Bulk single use articles shall be commercially packaged and handled in such a way as to protect them from contamination. Storage of single use articles shall not be in a toilet room or vestibule of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(4) Work tables and chairs or benches shall be provided for each tattoo artist. The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light colored, nonabsorbent, corrosive-resistant, and easily sanitized. The work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application. All existing tattoo studios on the effective date of the administrative regulation shall be exempt from the required color of the work table.

(5) All materials applied to the human skin shall be from single use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

(6) No pets, except working dogs, i.e., guide dogs or security dogs from a certified trainer, shall be permitted in the studio.

Section 3. Operation Standards. (1) Records.

(a) For each patron, proper records of tattoos administered shall be maintained by the holder of a studio registration.

(b) A record of each patron shall be prepared prior to any procedure being performed and shall include the patron's name and signature, address and age, the date tattooed, the design of the tattoo, its location on the patron's body, and the name of the tattoo artist who performed the work.

(c) Each record shall be entered in ink or indelible pencil, shall be available at a reasonable time for examination by the cabinet. The signature of the patron shall be on the record.

(d) Before tattoo administration, there shall be a discussion conducted with the patron on the risks involved in the tattoo requested, and its possible complications, which shall be entered in the record.

(e) All records required by this administrative regulation shall be kept on file for five (5) years by the holder of the studio registration for the studio in which the tattoo was performed.

(2) Consent.

(a) Written consent for tattooing of minors shall be obtained from one (1) parent or guardian.

(b) The records of the written consents shall be kept on file for five (5) years by the holder of the studio registration for the tattoo studio in which the tattoo was performed.

(c) The person receiving the tattoo shall attest to the fact that they are not intoxicated or under the influence of drugs or alcohol.

(3) Tattooing procedures.

(a) Printed instructions on the care of the skin shall be given to each patron or customer after tattooing as a precaution to prevent infection.

(b) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed.

(c) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.

(d) Tattoo artists who are experiencing symptoms of diarrhea, vomiting, fever, rash, productive cough, jaundice or draining (or open) skin infections such as boils, impetigo or scabies shall refrain from tattooing activities.

(e) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap, and individual hand brush that is clean and in good repair.

(f) The tattoo artist's hands shall be air blown dried or be dried by a single use towel. In addition, disposable, latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.

(g) Only sterilized or single use, disposable razors shall be used to shave the area to be tattooed.

(h) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an antibacterial solution.

(i) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, it shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty (20) minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.

(j) If a paper stencil is used by a tattoo artist for transferring the

design to the skin, it shall be single use and disposable.

(k) If the design is drawn directly onto the skin, it shall be applied with a single use article only.

(l) A registered tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.

(4) Dyes or pigments.

(a) In preparing dyes or pigments to be used by a tattoo artist, only nontoxic sterile materials shall be used. Single use or individual portions of dyes or pigments in clean, sterilized individual containers or single use containers shall be used for each patron.

(b) After tattooing, the remaining unused dye or pigment in the single use or individual containers shall be discarded along with the container.

(c) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(5) Sterilization of needles.

(a) A set of individual, sterilized needles shall be used by a tattoo artist for each patron.

(b) To guard against a potential temptation to reuse single service needles because of exhaustion of existing supplies, not less than twenty-four (24) sets per studio of sterilized needles and tubes shall be on hand for the entire day or night operation. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization.

(c) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(d) If used instruments are ultrasoniced prior to being placed in the used instrument container, they shall be ultrasoniced, and then rinsed under running hot water prior to being placed in the used instrument container.

(e) The ultrasonic unit shall be sanitized with a germicidal solution daily.

(f) If used instruments are not ultrasoniced prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(g) All nondisposable instruments including the needle tubes shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags specifically made for the purpose of autoclave sterilization, and include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.

(h) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization shall be utilized during the autoclave sterilization process.

(i) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them.

(j) No rusty, defective or faulty instruments shall be kept in the studio.

(6) Aftercare of tattoo.

(a) The completed tattoo shall be washed with a single use towel saturated with an antibacterial solution.

(b) After drying, antibacterial solution shall be applied and the entire area covered with a single use covering, which may, in turn, be covered with gauze and fastened to the site with adhesive tape.

Section 4. Facilities and Equipment. (1) General physical environment.

(a) Tattoo studios shall have at least fifty (50) footcandles of light and adequate ventilation. All walls and ceilings shall be smooth and easily cleaned. Walls and ceilings shall be painted a light color.

(b) The floor of the tattoo work room shall be constructed of impervious material. The floor shall be swept and wet mopped daily. Floors, walls, or ceilings shall not be swept or cleaned while tattooing is in operation.

(c) Convenient, clean, and sanitary toilet and handwashing facilities shall be made accessible to customers.

(d) The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat, and free of liter and rubbish.

(2) Work room.

(a) Each tattoo studio shall have a work room separate and apart from a waiting room or any room or rooms used for any other purpose. The work room shall not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only in the work room.

(b) The work room shall be equipped with hot and cold running water, and one (1) sink or basin per artist operating at the same time.

(c) The sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing. They shall be equipped with foot, wrist, or single lever action controls, soap, a germicidal solution, single use towels, and individual hand brushes clean and in good repair for each tattoo artist. All plumbing shall be in compliance with the State Plumbing Code under KRS Chapter 318.

(d) No person shall consume any food or drink nor smoke in the work room.

Section 5. Disposal of Waste. The tattoo studio operator shall provide for the proper and safe disposal of all types of waste products.

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

(2) Needles shall not be purposely bent or broken, or otherwise manipulated by hand.

(3) The containers of sharp wastes shall be sent to a facility where they are either incinerated or otherwise rendered nonhazardous.

(4) All disposable waste shall be placed in easily cleanable, closed containers provided with tight fitting lids, so as to prevent leakage or spillage. Waste containers shall be kept closed when not in use. Disposable waste shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials. All disposable waste shall be sprayed with a ten (10) percent chlorine solution immediately following each tattoo application.

Section 6. Inspection Fee. An inspection fee is required for cost of inspections conducted by the local health department to determine compliance with administrative regulations. An annual inspection fee of $100 is assessed for each tattoo studio or business.

Section 7. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 11, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by December 17, 1992, of their desire to appear and testify at the hearing: Masten Childers, II, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Dudley Conner or Anita Travis

(1) Type and number of entities affected: 40 existing businesses (200 artists estimated to be operating in Kentucky) and 120 local health departments.

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

1. First year: $20 per business registration fee and $100 per tattoo business inspection fee; local health department program cost - $5,000; state cost - $500.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings:

1. First year: State cost: applications, registration forms, inspection sheets, and training provided to health departments. Local health department cost: training, travel and surveillance activities. New program could significantly add to the overall workload of health departments.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: Local revenue increase of $800; state revenue allocated to health departments - $4,000.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Fees apply to all tattoo businesses equally.

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. Local health departments.

(3) State the aspect or service of local government to which this administrative regulation relates. Registration and inspection of tattoo businesses will be conducted by local health departments.

(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: Mandates annual issuance of tattoo business registration as well as two inspections of the business per year.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:230. Adult day care center certification.

RELATES TO: Acts 1992, c. 422, p.1856-1858

STATUTORY AUTHORITY: KRS 194.050, 205.204(2), Acts 1992, c. 422, Section 2, p.1858

NECESSITY AND FUNCTION: Senate Bill 198, enacted during the 1992 General Assembly, requires the Cabinet for Human Resources to establish standards for the safety, health and treatment of clients receiving services in adult day care centers in Kentucky, and establish criteria for the certification of these centers. The purpose of this administrative regulation is to set forth these standards and criteria.

Section 1. Definitions. (1) "Adult day care center" is governed by Acts 1992, c. 422, p.1858.

(2) "Cabinet" is governed by KRS 205.010(1).

(3) "Commissioner" means the Commissioner for the Department for Social Services.

(4) "Department" means the Department for Social Services.

(5) "Experienced" means a person with six (6) months' professional work history with adults.

(6) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(7) "Socialization" means the act of participating in a social group.

Section 2. Certification of Adult Day Care Centers. Adult day care centers, as defined in Acts 1992, c. 422, p.1856-1858, shall be certified by the cabinet. Authorized representatives of the department have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of complaints.

(1) Application for certification shall be made by filing a DSS-1284 Application for Adult Day Center Certification, herein incorporated by reference, with the Cabinet for Human Resources, Department for Social Services, Division of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Renewal of certification shall be made biennially. A renewal application shall be submitted prior to the expiration date of the current certification.

(3) Compliance with the health, safety and treatment standards established in this administrative regulation shall be documented on the DSS-1283 Adult Day Care Certification Check List, herein incorporated by reference. Documented compliance shall be confirmed by unannounced inspections by the department.

(4) Regulatory violations identified during inspections shall be transmitted in writing to the facility. The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days.

(a) The plan shall specify the dates by which each of the violations shall be corrected.

(b) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.

(c) If the plan is unacceptable, the reasons shall be specified. The facility shall modify or amend the plan and resubmit within ten (10) days.

(5) The commissioner may deny or revoke certification if the health, safety or security of clients is in danger or for failure to meet the standards of this administrative regulation after the expiration of a period not to exceed sixty (60) days from the date of the first official notice that standards have not been met. If certification is revoked, the applicant shall not reapply for at least one (1) year from the designated date of closure established by the cabinet.

(6) If certification has been denied or revoked, the applicant shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within thirty (30) days after receiving the notice of the action of the commissioner.

(7) Upon receipt of the request for a hearing, the commissioner or his representative shall notify the applicant 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.

(8) 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 applicant shall be notified in writing of the decision of the hearing officer.

(9) If certification denial or revocation is upheld, the Commissioner of the Department for Social Services' notification shall specify the date by which the center shall close and the applicant shall be notified in writing.

(10) A center may appeal a final decision to the circuit court within thirty (30) days of the decision.

Section 3. Responsibilities of the Service Provider. (1) Adult day care centers shall meet the following general requirements:

(a) Program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services; and

(b) Services shall be provided in a safe manner.

(2) The service provider shall meet the following program requirements:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 5 of this administrative regulation;

(c) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests;

(d) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(e) Post a monthly calendar of planned activities and available services in a conspicuous place. Calendars shall be maintained for one (1) year for monitoring purposes;

(f) Provide assistance, when necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(g) Provide a meal that includes a food from each of the four (4) basic food groups, if the program is in operation during a normal meal hour. Therapeutic diets shall be available in accordance with a physician's order;

(h) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(i) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for one (1) year for monitoring purposes;

(j) Provide first aid and make arrangements for medical care with the participant's physician or hospital for accidents or medical emergencies; and

(k) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition.

(l) Comply with provisions of 905 KAR 8:220, Section 11 for self-administration of medications.

(m) Written complaint procedures to register complaints shall:

1. Include the address and phone number of the Division of Aging Services;
2. Be posted in a conspicuous place; and
3. Be provided to each participant.

Section 4. Facility Requirements. Certified adult day care providers shall:

(1) Locate, design and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with disabilities;

(2) Provide space and arrangements of furnishings to allow:

(a) Adequate client movement;

(b) Program activities;

(c) Food service; and

(d) Socialization;

(3) Provide private office space to permit individual counseling and confidential maintenance of records;

(4) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;

(5) Provide covered leak proof garbage disposal units for the kitchen;

(6) Equip each center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet and wash basin for each ten (10) participants;

(b) Easy accessibility to the disabled;

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required; and

(d) Bathroom facilities shall:

1. Be cleaned and sanitized daily;
2. Contain hot and cold running water, mirror, soap and paper towels or electric hand dryers; and
3. Contain leak proof garbage disposal units emptied and cleaned daily;

(7) Comply with applicable local housing and health codes;

(8) Comply with local zoning requirements;

(9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(10) Maintain fully operational fire extinguisher with initial and annually updated inspection tags;

(11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;

(12) Provide identifiable space during hours of operation for participants in need of a more private environment or rest area;

(13) Provide separate identifiable space during operational hours, if colocated in a facility housing other services.

Section 5. Program Staff. (1) Staffing requirements for certified centers shall include:

(a) Trained and experienced staff shall be present each day of operation;

(b) Staffing ratios shall be one (1) staff for each five (5) participants;

(c) There shall be at least two (2) responsible persons, one (1) of whom shall be a paid staff member, at the center at times when there is more than one (1) participant in attendance;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(2) Staff qualifications for programs shall be as follows:

(a) Directors of centers shall meet one (1) of the following requirements:

1. A trained social worker possessing:

a. A minimum of a bachelor's degree in social work or a related field and two (2) years' professional experience; or

b. A master's degree in social work and six (6) months' professional experience;,or

2. A registered or practical nurse licensed in Kentucky with two (2) years professional experience;

3. An individual at least twenty-one (21) years of age having;

a. A high school diploma or GED certificate;

b. Sixty (60) semester hours of professional education in social services, health or gerontology; and

c. Two (2) years' professional experience;

d. Professional experience shall substitute for professional education on a year-for-year basis.

(b) Staff and volunteers with ongoing client contact shall submit evidence of tuberculosis testing as governed by 902 KAR 20:200:

1. Within one (1) year prior to employment; or

2. During the first week of employment; and
3. Annually thereafter;
4. Evidence of testing shall be maintained in the personnel file.

(c) Staff or volunteers contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted. A physician's statement shall be required for return to work.

(3) Training of staff shall be provided by appropriate qualified professionals as follows:

(a) Within one (1) month of employment, paid and volunteer personnel shall receive orientation to the center including:

1. Program objectives;
2. Center policies and procedures;
3. Health, sanitation, emergency and safety codes and procedures;
4. Client confidentiality; and
5. Personnel policies and procedures;
6. Policies and procedures shall be explained verbally and provided in writing.

(b) Within three (3) months of employment, personnel shall be provided basic training that includes:

1. The aging process;
2. Interpersonal communications;
3. Personal care;
4. First aid;
5. Identifying and reporting health problems;
6. Stress management; and
7. Recognizing and reporting suspected adult abuse, neglect, or exploitation.

(c) Within one (1) month of employment, staff shall become certified in cardiopulmonary resuscitation (CPR) by the American Heart Association or the American Red Cross. There shall be at least one (1) currently certified staff member present whenever clients are at the center.

Section 6. Client Records. Certified adult day care centers shall maintain client records at the site. Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and shall include the recorder's title. Records shall include:

(1) Client registration information containing:

(a) Client name, address, age, and other identifying information;
(b) Primary caregiver;
(c) Emergency contact information regarding responsible party and personal physician;
(d) Behaviors of the client impacting on his care and treatment;
(e) Limitations in activities of daily living;
(f) Physical disabilities or conditions requiring specific modes of care; and
(g) Additional information supplied by the caregiver, family or staff necessary for the provision of comprehensive individualized care including a listing of the client's hobbies, interests and skills.

(2) An ongoing record, indicating changes in the client's:

1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or
8. Other changes or observations noted by program staff.

(3) Client attendance records.

(4) Documentation of prescription medication, prescribed by a duly licensed physician, and nonprescription medication, authorized by a responsible party or guardian, self-administered by a client.

Section 7. Materials Incorporated by Reference. (1) Forms necessary for the implementation of adult day care certification are herein 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 19, 1992
FILED WITH LRC: October 21, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 22, 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 December 17, 1992: Masten Childers, II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are 75 adult day care centers of which 65 are adult day care centers funded through the Division of Aging Services and any facility which provides part-time care, day or night, but less than 24 hours to at least four adults not related to the operator of the facility by blood, marriage or adoption shall be required to become certified and comply with the standards set forth in this administrative regulation.

(a) Direct and indirect costs or savings to those affected: For those entities currently funded through the Division of Aging Services there will be no direct or indirect cost or savings as they already comply with the state standards to receive funding. For those affected entities providing adult day care services pursuant to KRS 205(16) there may be direct and indirect costs associated with meeting health, safety and treatment requirements specified within this administrative regulation. Savings for these programs may result from eligibility for the Child and Adult Care Food Program (CACFP) administered through the USDA.

1. First Year: There will be some first year administrative costs in making the application for certification and the inspection process for those entities currently funded through the Division of Aging Services (DAS). Other first year costs relating to startup and compliance with health, safety and treatment requirements may be increased for entities not currently funded through DAS. Savings my result from eligibility for the CACFP.

2. Continuing costs or savings: Once the certification process is completed it is not anticipated that there will be additional costs or savings to the affected entities except that the certification is renewable biennially.

3. Additional factors increasing or decreasing cost (note any effects upon competition): Once the certification process is completed it is not anticipated that there will be additional costs or savings to the affected entities except that the certification is renewable biennially. Another factor increasing costs is if complaints are received and the entity shall meet the standards in compliance with this administrative regulation. Also if new centers are identified, these entities will have to make application for certification. There are no effect on competition as this regulation is applicable to all facilities that are governed by SB 198.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements for the affected entities include the submission of an initial application which shall be renewed biennially. Other requirements include compliance with Section 6 relating to maintenance of client records.

(2) Effects on the promulgating administrative body: The effect on the promulgating administrative body is increased monitoring,

especially as related to the private organizations whose numbers are unknown. Additional staff time will be required for processing, inspecting and certifying the adult day care centers and in responding to complaints and enforcement of the standards set forth in this administrative regulation.

(a) Direct and indirect costs or savings: Direct and indirect costs associated with implementing the certification process will include additional staff time and travel of about 8 hours per month. Depending on the number of nonstate funded centers additional staff time may be necessary to complete the certification process.

1. First Year: Direct and indirect costs associated with implementing the certification process will include additional staff time and travel of about 8 hours per month. Depending on the number of nonstate funded centers additional staff time may be necessary to complete the certification process.

2. Continuing costs or savings: Direct and indirect costs associated with implementing the certification process will include additional staff time and travel of about 8 hours per month. Depending on the number of nonstate funded centers additional staff time may be necessary to complete the certification process.

3. Additional factors increasing or decreasing costs: Additional factors that may increase the cost of the certification process include responding to complaints from clients, investigating facilities, and enforcement actions taken by the agency to enforce the standards in nonstate funded centers.

(b) Reporting and paperwork requirements: The promulgating agency will be require to monitor the certification process from application to approval and respond to complaints from the clients or private citizens. Additionally the agency will have to maintain a list of adult day care facilities and coordinate the renewal process biennially.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered as SB 198 enacted by the 1992 General Assembly requires the certification of adult day care centers as defined in KRS 205(16).

(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 that are in conflict, overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict:
There are no statutes, administrative regulations or government policies that are in conflict, overlap or duplicate this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There are no statutes, administrative regulations or government policies that are in conflict, overlap or duplicate this administrative regulation.

(6) Any additional information or comments: There is not any additional information or comments of which we are aware.

TIERING: Was tiering applied? No. Tiering was not applied in this administrative regulation as the certification process will be applicable statewide for any adult day care center as defined in SB 198.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:575. Compliance with laboratory certification requirements.

RELATES TO: KRS 205.520, 42 CFR Part 493, 42 USC 1396a-d
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to compliance by medicaid providers with requirements for certification for performance of laboratory testing and implements the Clinical Laboratory Improvement Amendments of 1988.

Section 1. Definitions. (1) "Certificate" means the appropriate certificate of waiver, certificate of registration, or certificate of accreditation issued by the United States Department of Health and Human Services (HHS) which authorizes the performance of laboratory testing by a provider of medical services.

(2) "Medicaid provider" means a participating provider of medical services under the Medicaid Program.

(3) "State-exempt" means the state laboratory licensing program has been approved by HHS.

Section 2. Requirement for Certification. Any provider of laboratory testing services participating in the Medicaid Program shall comply with certification requirements specified in 42 CFR Part 493 unless the state's licensure program has been approved by the HHS and the provider is appropriately licensed or certified under the state-exempt licensing program.

Section 3. Issues Related to Certification Requirements. (1) A provider must have a current, valid certificate in order to provide laboratory testing under the Medicaid Program.

(2) A Medicaid provider may perform Medicaid covered laboratory services for Medicaid eligible individuals only to the extent authorized by the provider's certificate.

(3) Any service not covered by the medicaid provider's certificate shall not be considered a covered Medicaid service.

(4) Any services not considered a covered Medicaid service shall not be paid for by the Medicaid Program.

(5) Payments for laboratory testing shall be made without proof of certification for the period December 1, 1992 through December 31, 1992, with payments subject to recovery if the provider does not subsequently receive and show proof of certification for that period of time. Claims for laboratory testing performed after December 31, 1992, shall be denied unless the appropriate certification has been obtained. If a request for certification is not made, is rejected, or when approved does not cover the provision of the laboratory test(s) for which payment has been made, the provider shall immediately refund all payments for the noncovered laboratory service(s).

(6) The provisions of this administrative regulation relate to covered laboratory testing which is otherwise provided for by Medicaid administrative regulations.

Section 4. State-exempt Laboratory Licensing Program. (1) If the state has a state-exempt laboratory licensing program, the requirements contained in this administrative regulation shall apply with regard to certifications from the state's licensing program.

(2) Providers licensed under a state-exempt program are not required to obtain a certificate issued by HHS.

Section 5. Effective Date. The provisions of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 12, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1992, five days

prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Thomas Graham

(1) Type and number of entities affected: All Medicaid providers furnishing laboratory services.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the November 4 and 5, 1992 Meeting

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 4, 1992 at 2 p.m. and Wednesday, November 5, 1992 at 2 p.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 October 5 and 6, 1992 meeting were approved.

Present were:

Members: November 4, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Pat McCuiston; Representatives Woody Allen, Jim Bruce and James Yates. November 5, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Paul P. Borden, Richard F. Casey, Roger Tharp, Kentucky Higher Education Assistance Authority; Anita Taylor, Registry of Election Finance; John Cubine, David H. MacKnight, Auditor of Public Accounts; Hanson Williams, Personnel Board; Daniel F. Egbers, Department of Personnel; William P. Hanes, Pam Johnson, Kentucky Retirement Systems; Julio Polio, Richard L. Ross, Kentucky Board of Pharmacy; Donald C. Haney, Dave Nicholas; Board for Registration of Professional Geologists; Thomas A. Young, Ronald D. Pritchert, Fish and Wildlife; Ronald Mills, Jody Curry, Iris Skidmore, Natural Resources and Environmental Protection Cabinet; Jack Damron, Cheryl Roberts, Brenda Priestley, Kathy Black-Dennis, Department of Corrections; Sandra G. Pullen, Jim Roberts, Transportation Cabinet; Anne Keating, Paul Hampton, Carole Kruse, Susan Goins, Perry Watson, Gary Peevely, Brad Matthews, Department of Education; Reginald L. Thomas, Kentucky State University; Patrick Watts, Department of Insurance; Judith G. Walden, Department of Housing, Buildings and Construction; Reginald Finger, Joyce Bothe, Karen Doyle, Cabinet for Human Resources; Bill Wilson, KMHI; Geo. Humfleet, Geo Humfleet Mobile Homes, Inc.; Prentice Harvey, State Farm Insurance; Ted Bradshaw; Mike Richter, Trading Post Mobile Homes; Jim Passmore, Passmore Mobile Homes; Bill Young, Kentucky Manufactured Housing; Larry Maggard; Jim Baker, Western Kentucky Coal Association; David E. Gray, Kentucky Asssociation of Career Colleges and Schools.

LRC Staff: Greg Karambellas, Joe Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman, Ed Sergent.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Auditor of Public Accounts: Audits

45 KAR 1:060. Confidentiality. The initial review of this administrative regulation had questioned what appeared to be an exemption to the Open Records Law (KRS 61.870-61.884) in Section 2(2)(a). This section provided that confidential information obtained by employees of the Auditor in the performance of their official duties shall be considered "preliminary", therefore exempt. Subcommittee staff considered Section 2(2)(b) subject to the same objection. In discussion with Subcommittee staff, Auditor's Office personnel stated that the intent of Section 2(2) was not to provide exemptions to the Open Records Law that were not permitted by that law; the intent was to prevent disclosure by Auditor's Office employees of confidential information to those who were not authorized to receive such information.

The Subcommittee and the agency agreed to amend this administrative regulation by deleting Section 2(2) in its entirety and by renumbering the remaining subsection accordingly.

Kentucky Employees' Retirement System: General Rules

105 KAR 1:020. Reciprocal program between CERS, KERS, SPRS, TRS and Legislator's Retirement Plan. In the Relates To section a statutory citation KRS 161.600(3) and 161.675 was added.

Chairman Kerr noted that there is a reciprocal Kentucky Teachers' Retirement Systems administrative regulation 102 KAR 1:100 which is at variance with its statute. He asked Pam Johnson or Bill Haynes, representing Kentucky Employees Retirement System to respond. Pam Johnson stated that KTRS has two administrative regulations on reciprocal programs, 102 KAR 1:100 and 102 KAR 1:185. The latter is in the process of being amended, but it was her understanding that the KTRS position concerning 100 KAR 1:100 was that the statute prevailed over the administrative regulation and that KTRS was not going to amend the administrative regulation. Chairman Kerr instructed staff to discuss this with KTRS staff and update the Subcommittee at the December meeting.

105 KAR 1:180. Death before retirement procedures. Section 4 was amended to insert after the words "Form 8" the words "Refund of Deceased Member's Account".

105 KAR 1:210. Disability procedure. Section 7 is amended to read as follows: In the first sentence, restore the word "medical" before the word "records" and insert the word "evidence" in lieu of the word "records". In the second sentence, restore the word "medical" and insert the word "evidence" in lieu of the word "information".

105 KAR 1:250. Participation of county attorney employees. Section 4 is amended to delete the "s" on the word "forms", and insert the word "is" in lieu of the word "are" after the word "regulation".

105 KAR 1:260. Purchase of out-of-state service credit. Section 1. is amended to read as follows: After the words "under KRS" insert the numbers "61.552(17) and (18)" in lieu of the numbers "61.555(17) to (18)" and insert the word "dated" in lieu of the word "effective". Section 3. is amended to read as follows: After the word "statute", delete the remainder of the sentence. Section 5. is amended to read as follows: After the word "notification" and before the period, insert the words "unless the employee participates in an installment purchase plan as provided under KRS 61.552(16) and 105 KAR 1:150" for clarity. Following Section 7., a new section is added as follows: "Section 8. The form required by this administrative regulation is incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, 40601-6124, Monday through Friday. These amendments were made for clarity and to conform to KRS Chapter 13A.

Board of Pharmacy

201 KAR 2:205. Pharmacist-in-charge. This administrative regulation was amended as follows: (1) NECESSITY AND FUNCTION, to include the specific applicable statutes; (2) Sections 1 and 2, to comply with KRS 13A.222(4)(c), prohibiting the use of "such", and requiring the use of an article if appropriate; and (3) Section 3 was added to incorporate by reference forms required by this administrative regulation. This new Section 3 was amended to insert the edition date of the material incorporated by reference, and to delete unnecessary language.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:220. Hunting seasons for migratory birds. This administrative regulation was amended to comply with the drafting and format requirements of KRS 13A.222(4)(b) and KRS 13A.220(4).

Wildlife

301 KAR 4:020. Ballard Wildlife Management Area restrictions. This administrative regulation was amended to comply with the drafting and format requirements of KRS 13A.222(4)(b) and KRS 13A.220(4).

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

Jody Curry and Iris Skidmore were present to represent the Department. At the October meeting of the Subcommittee, the Surface Mining Reclamation and Enforcement regulations were deferred at the request of the Department. Some of the regulated community raised questions and the Department then requested deferral to address those questions. Chairman Kerr, at the October meeting, raised a question concerning the definition of "person" used in several of those regulations. In each instance the definition used stated "person" is defined in KRS 350.010 and KRS 446.010(26)". He pointed out to the Department that the definition appeared to go beyond the definition of "person" in KRS Chapter 350 since the two definitions were different.

Consequently, six of the surface mining administrative regulations were withdrawn (and do not appear on this agenda).because the only amendment to each was the addition of "and KRS 446.010(26)" to the definition of "person".

Ms. Curry stated that she had met with the regulated community in the intervening month since the administrative regulations were deferred and would like to submit to the Subcommittee a clarified response to a question raised at the public hearing. Ms. Curry requested that this be allowed to be submitted for informational purposes for the regulated community. The comments concern subject "(57)" in the STATEMENT OF CONSIDERATION, dealing with "burden of proof", and emphasize that the Department's requirements mirror the federal requirements. Chairman Kerr pointed out that KRS Chapter 13A requires an agency to file a STATEMENT OF CONSIDERATION within 15 days of a public hearing. He stated that he does not believe a STATEMENT OF CONSIDERATION can be amended after that time period is up under the provisions of KRS Chapter 13A. The information was offered, considered, and accepted only as information offered for clarity.

405 KAR 7:001. Definitions for 405 KAR Chapter 7. "and KRS 446.010(26)" is deleted.

405 KAR 7:091. General practice provisions. Technical amendment. Section 5(1)(a) is amended after the words "Service by certified mail is complete upon delivery of the envelope or as provided by" the words "paragraph (c) of this subsection: are deleted and the words "*subsection (2) of this section" are inserted in lieu thereof.

405 KAR 7:092. Administrative hearings and assessment conferences. Section 11(2)(b) after the words "shall set the time and place for an administrative hearing to be held not" the word "less" is deleted and the word "more" is inserted in lieu thereof.

Permits

405 KAR 8:001. Definitions for 405 KAR Chapter 8. "and KRS 446.010(26)" is deleted.

Justice Cabinet: Kentucky Community Corrections Grant Program

500 KAR 10:001 & E. Definitions. This administrative regulation was amended to: (1) Add "KRS 196.710" to the RELATES TO and STATUTORY AUTHORITY Section and delete the reference to the "Kentucky Acts" pursuant to KRS 13A.222(4)(l); (2) Clarify the NECESSITY AND FUNCTION Section pursuant to KRS 13A.222(4)(a) to provide that definitions apply to terms used in 500 KAR Chapter 10; (3) Pursuant to KRS 13A.120(1)(e) & (f) delete the definitions of "Targeted Offender" and "Director" found in KRS 196.705; (4) Delete superfluous language preceding the definitions in Section 1, pursuant to KRS 13A.222(4)(a); (5) Provide that "Board" means the board found in KRS 196.725; (6) Delete "shall mean" in each definition and insert "means" in lieu thereof pursuant to KRS 13A.220(4), KRS 13A.222(4)(a); (7) Renumber paragraphs (a), (d), (e), (f), (g), (h), and (i) as subsections (1) through (7). pursuant to KRS 13A.220(4); and (8) File a local government fiscal note as required by KRS 13A.250.

500 KAR 10:020 & E. Administration and application procedure for community corrections grant program. This administrative regulation was amended to: (1) Add "KRS 196.710" to the RELATES TO and STATUTORY AUTHORITY Section and delete the reference to the "Kentucky Acts" pursuant to KRS 13A.222(4)(l); (2) Amend Section 4(1)(b) to comply with Section 3 of the Kentucky Constitution and provide that grant funds authorized under Community Corrections Program may only be disbursed when services are performed; and (3) File a local government fiscal note as required by KRS 13A.250.

500 KAR 10:030 & E. Community corrections board. This administrative regulation was amended to: (1) Add "KRS 196.710" to Section 1(1) &(2) the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION Sections and delete the reference to the "Kentucky Acts" pursuant to KRS 13A.222(4)(l); and (2) File a local government fiscal note as required by KRS 13A.250.

500 KAR 10:040 & E. Annual review for compliance. This administrative regulation was amended to: (1) Add "KRS 196.710" to the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION Sections and delete the reference to the "Kentucky Acts" pursuant to KRS 13A.222(4)(l); and (2) File a local government fiscal note required as by KRS 13A.250.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. This administrative regulation was amended to delete "Are encouraged to" and insert "may" in KSR 15-00-10, Page 5, G. 2, pursuant to KRS 13A.222(4)(b).

501 KAR 6:060. Northpoint Training Center. This administrative regulation was amended to delete "Is" before "prohibited" and insert "shall be"in NTC 24-04-01, Page 4, Item 5, pursuant KRS 13A.222(4)(b).

501 KAR 6:070. Kentucky Correctional Institution for Women. This administrative regulation was amended to insert a comma after the word "procedure" and before the word "Kentucky" in KCIW 16-03-02, Page 3, F, pursuant to KRS 13A.222(4)(a).

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended to: (1) Insert "arising from or out of his employment with the Cabinet" after "summons or law suit" in BCC 01-09-01, B, 1, pursuant to KRS 13A.222(4)(a); and (2) Bracket and strike through "reactionary" in BCC 01-16-01, Page 1, E, pursuant to KRS 13A.222(4)(a).

501 KAR 6:160. Correctional industries. This administrative regulation was amended to: (1) Insert "Legislative Research Commission" before "LRC" and insert parentheses around "LRC" the first time appears in CI 01-01-01, Page 1, Item 3, pursuant to KRS 13A.222(4)(a); and (2)Delete "Shall have authority to" and insert "may" in CI 02-01-01. Page 5, 2B, pursuant to KRS 13A.222(4)(a).

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:110 & E. Permits for moving overdimensional house trailers. This administrative regulation was amended to comply with KRS 13A.120(2)(e), deleting language that repeated or summarized statutory language. Department of Transportation representatives offered an amendment to Section 7(1)(b)3. which reduced the number of required escort vehicles from three (3) to two (2) for transportation of a house trailer that exceeds fourteen (14) feet in width.

Representative Allen questioned why the department initially required three escorts. The department responded that Kentucky is presently the first state to adopt a sixteen (16) foot wide annual permit. Initially, sixteen foot house trailers were restricted to four (4) lane highways. After further inspection, the department learned that many dealers of manufactured homes are located in rural areas, and in an effort to regulate transportation of house trailers in an equitable way, the department decided to broaden the annual permit to a statewide system. Because of narrow rural two-lane roads, the department required three escorts for the safety of the motoring public.

Department representatives described how they have worked closely with representatives of the Manufactured Housing Institute

who have agreed to educate and continue to educate escort personnel. It was on this basis that the department agreed to reduce the escort requirement.

Representative Yates asked if most states require only one escort. The department responded that several states require only one escort; however, others states also require two escorts. At the time the administrative regulation was first amended, Kentucky was the only state requiring three escorts based on the fact that Kentucky was the only state adopting an annual permit for fourteen (14) wide house trailers.

Education and Humanities Cabinet: Department of Education: Office of Chief State School Officer

701 KAR 5:075. Anti-nepotism certifications of superintendents. This administrative regulation was amended to conform to the format requirements of KRS 13A.220(4).

Office of District Support Services: School District Finance

702 KAR 3:260. Restructuring revenue bond issues. This administrative regulation was amended to conform to the drafting requirements of KRS 13A.222(4)(b).

Pupil Transportation

702 KAR 5:080. Bus drivers' qualifications; responsibilities.This administrative regulation was amended to conform to the format requirements of KRS 13A.220(4).

Chairman Kerr questioned whether the term "next working day" found in Section 2(3)(b) referred to the driver's or clinic's "next working day". To remove the ambiguity the Subcommittee requested that Section 2(3)(b) be amended to require employee testing on the "next calendar day" when a driver, involved in an vehicle accident resulting in bodily injury or property damage, is unable to return to the bus compound during normal working hours. The department agreed to the amendment.

A representative from the Department of Transportation, Office of Program Management responded that when an accident occurs, the Director of Transportation generally travels to the scene of the accident immediately. The Director, or the Superintendent, makes a determination at that time whether drug testing is required.

The Subcommittee questioned Item #8 in the incorporated materials relating to the "Drug-Alcohol Testing Program Laboratory Section" criteria, because it required, as a condition, that a laboratory publish a newsletter.

Subcommittee staff questioned whether the selection criteria limits or otherwise disqualifies laboratories for consideration based on the narrow requirement that the lab publish a newsletter. Department of Education representatives responded that it is not their intention to exclude qualified laboratories. Chairman Kerr commented that maintaining a newsletter service would be an added expense for a laboratory. The department explained that Item #8 is necessary to insure that a laboratory maintains good dissemination of information, but would be willing to delete the newsletter requirement.

Chairman Kerr expressed concern whether the selection criteria was written in such a way to direct business to particular laboratories that have a newsletter in place and subsequently would qualify for certification as a testing laboratory. Again, the department responded that it is not the intent of the Department of Education to exclude most labs because they are required to have a newsletter. The Subcommittee and department agreed to amend Item #8 by deleting the language: "and the publishing of a laboratory newsletter".

Senator Huff questioned the preemployment drug testing procedures. The department responded that testing only occurs as a condition of employment and following a vehicle accident if there is bodily injury or property damage which exceeds $1,000.

Chairman Kerr clarified that this administrative regulation does not propose random drug testing and asked the department if it anticipates random testing in the future. The department explained that, although a federal regulation is forthcoming that would require both mandatory initial and random drug testing for bus drivers, state law does not now require testing.

School Terms, Attendance and Operation

702 KAR 7:010. Terms and months. This administrative regulation was amended to conform to the drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b).

Office of Learning Programs Development: Instruction

704 KAR 3:390. Extended school services. This administrative regulation was amended to conform to the drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b).

704 KAR 3:405 & E. Superintendent training program and assessment process. This administrative regulation was amended to conform to the drafting and format requirements of KRS 13A.222(4)(b) and KRS 13A.220(4).

Kentucky State University: Board of Regents

745 KAR 1:035. Procurement procedures. Section 1, 2 and 3 of this administrative regulation repeat statutory language and were amended to conform to the requirements of KRS 13A.120(2)(e).

Public Protection and Regulation Cabinet: Department of Insurance: Administration

806 KAR 2:110. Financial examinations of insurance. Section 3 of this administrative regulation repeats statutory language found in KRS 304.2-050(3) and was amended to conform to KRS 13A.120(2)(e).

Chairman Kerr questioned why the administrative regulation required the examination of domestic insurers every four (4) years while examination of foreign insurers is required only once every five (5) years. The department responded that the four year requirement for domestic insurers is established by statute and the five year standard is the standard applied by other states.

Chairman Kerr stated that KRS 304.2-210(1) gives the department the authority to examine the insurer "as reasonably necessary". The legislature felt it necessary to examine domestic insurers every four years. Therefore, it would seem to follow that examination of foreign insurers should be the same or even more frequent. The department explained that nationwide, insurance regulation by a state is generally greater over domestic insurers than foreign insurers.

Chairmen Kerr inquired whether the department of insurance relies on the fact that foreign states regulate and examine their own insurers. The department representative agreed that was the case.

Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation" where it appears, pursuant to KRS 13A.010(2); (2) Delete the Definition of "First Party Claimant" in Section 1(5) and insert a definition for "Days"; (3) Delete the definition "Good faith" in Section 1(6); (4) Insert "and" after the definition of "Replacement Crash Parts" in Section 1(11); (5) Delete the "and" after Section 1(12); and (6) Delete Section 1(13) in its entirety; (6) Delete the language in Section 2(2) which provides that: this administrative regulation is modeled after the National Association of Insurance Commissioners (NAIC) model administrative regulation; this administrative regulation should not be used in a state that authorizes a private cause of action; and this administrative regulation is only to be used for guidance; (7) Insert a new Section 2(2) that provides a "Statement of Enforcement Policy" which includes; (a) Noting violations of this administrative regulation in Market Conduct Examinations; and (b) Finding violations only after the insurer or agent has been given an opportunity to pay the claim and interest thereon; (7) Insert a new Section 2(3) which provides that: (a) The sole purpose of this administrative regulation is to provide standards for administrative investigations, examinations, adjudications, and appeals; (b) a violation of this administrative regulation shall only be found by the Commissioner; and (c) this administrative regulation shall not be construed to create or imply a

private cause of action for violation of this administrative regulation; (8) Delete the language in Section 4(1) which provides for full disclosure of all "pertinent benefits, coverages, or other provisions of a policy, certificate, or contract under which a claim is presented" and insert language that guarantees that "Insurers and agents shall not misrepresent or conceal from claimants and pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract when the benefits, coverages, or other provisions are pertinent to a claim."; (9) Delete language in Section 4(2) which prohibits agents from concealing from first party claimants benefits, coverages, or other provisions pertinent to a claim; (10) Delete the word "calendar" before the word "days" in Section 5(1); (11) Delete the words "twenty-one (21) calendar" in Section 5(2) and insert "fifteen (15)"; Delete the word "calendar" in Sections 5(3) &(4); (12) Amend Section 6(1)(a) to delete the requirement that an unpaid claim bear interest at a rate of twelve percent (12%) if not paid within 30 days from the receipt of loss and that attorney's fees incurred in collecting the claim be paid; (13) Delete the language in Section 6(2)(a) which requires that the insured be informed by letter of the availability of interest and attorney's fees for the collection of unpaid claims; (14) Section 7(1)(b) is amended to provide for determining fair market values for loss of vehicles and for right of recourse in the event the parties cannot agree on what the fair market value of the vehicle is.

This administrative regulation was promulgated to replace 806 KAR 12:094, Unfair property and casualty insurance claims settlement practices, that was found deficient by ARRS on October 12, 1990 and expired on April 14, 1992. 806 KAR 12:094 was found deficient because: (1) The administrative regulation made the statement that it was simply "guidance"; (2) The NAIC Model Regulation, upon which 806 KAR 12:094 was based provided that the model regulation was not appropriate for a state that allows a private cause of action; (3) In State Farm Mutual Automobile Insurance Company v. Reeder, the Supreme Court ruled that a private cause of action existed under KRS 304.12-230, The Unfair Claims Settlement Practices Act, and KRS 446.070, relating to Statutory Actions; and (4) It was not clear what the agency intends by the administrative regulation.

Chairman Kerr stated that the first sentence in Section 2(3) of the amendment should be placed in the NECESSITY AND FUNCTION Section because it set out the purpose of the administrative regulation. Department personnel stated that they had seen language enumerating the purpose of an administrative regulation placed in body of an administrative regulation as well as the NECESSITY AND FUNCTION Section. The Department further stated that industry wanted it clearly stated in the body of the administrative regulation that the sole purpose was to provide standards for administrative investigations, examinations, adjudications and appeals.

Chairman Kerr pointed out that the second sentence of Section 2(3) provides that violations can only be found by the Commissioner. Chairman Kerr asked if this was an attempt to contravene the jurisdiction of the Court which has held that an Insured can bring a private right of action for unfair claims settlement practices. Department personnel stated that the language in sentence two of Section 2(3) was suggested by the insurance industry and that the Department had no objection to the language remaining in the administrative regulation. The Department felt that a court would either ignore the language or perhaps strike it from the subsection.

Chairman Kerr stated that the third sentence of Section 2(3) provides that this administrative regulation "shall not be construed to create or imply a private cause of action for violation of this administrative regulation." The Chairman pointed out that the Kentucky Supreme Court in State Farm Mutual Automobile Insurance Company v. Reeder, 763 S.W. 2d 116 (Ky. 1988) held that a private cause of action for unfair claims settlement practices exists pursuant to KRS 403.12-230 and KRS 446.070. Department personnel stated that no conflict exists between this administrative regulation and the Reeder case. The Chairman asked if the insurance industry was simply trying to say that this administrative regulation created no new cause of action in addition to the statutory action created pursuant to KRS 446.070. Staff pointed out that if the subcommittee construes this subsection as expanding on the statute then the provision would have to be deleted. Chairman Kerr asked if there was a bill introduced in the last session of the General Assembly dealing with a private cause of action. The Department stated that a bill prohibiting private causes of action was introduced but never got out of committee.

Chairman Kerr pointed out the reasons 806 KAR 12:094 had been found deficient by the subcommittee in 1990 and again emphasized that the NAIC does not feel that a state which has a private cause of action should promulgate an administrative regulation like the one before the subcommittee. The Department stated that the current administrative regulation is different than the NAIC regulation because it states an affirmative enforcement policy. Staff pointed out that if the Subcommittee determines that this administrative regulation contains the same or similar provisions that led to the finding of deficiency of 806 KAR 12:094. KRS 13A.330(6) provides that this administrative regulation cannot be repromulgated for two (2) years after expiration of the deficient administrative regulation.

The Subcommittee adopted the administrative regulation as amended by the Department. The Subcommittee further found that the administrative regulation was not the same or substantially similar as 806 KAR 12:094.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020. Parts or materials list. This administrative regulation was amended to: (1) Delete the word "shall mean" and insert the word "means" in Sections 1(1), (4) and (5) pursuant to KRS 13A. 220(4); (2)Delete the word "standard" and insert the word "specification" in Section 2(1) pursuant to KRS 13A.220(4); (3) Delete the word "is prohibited" and insert the word "shall not be used" in Section 2(2) pursuant to KRS 13A.222(4)(b); (4) Delete the words "It shall be the responsibility of the" and insert the word "The" before "Director" in Section 4 pursuant to KRS 13A.222(4)(a); and (5) Insert the word "shall" following the word "Plumbing" and before the word "maintain" in Section 4 pursuant to KRS 13A.222(4)(b). 815 KAR 20:060. Quality and weight of materials. This administrative regulation was amended to: (1) Delete the word "standards" and insert the word "specifications" in the NECESSITY AND FUNCTION Section, Section 1(2) & (3), Sections 6, 7, 8 and 9 and Section 10(1) &(2) pursuant to KRS 13A.222(4)(a); (2) Insert the word "administrative" before the word "regulation" where necessary pursuant to KRS 13A.010(2); and (3) Delete the words "Polyethylene Sewer Piping and Polyethylene and Corrugated Polyethylene Subsoil Drainage Tubing" in the title to Section 4 since the body of Section 4 deleted all references to the terms;

815 KAR 20:070. Plumbing fixtures. This administrative regulation was amended to: (1) Delete the reference to "standard" and insert the reference to "specification" in the NECESSITY AND FUNCTION Section, Section 6(4) and Section 12(4) pursuant to KRS 13A.222(4)(a); and (2) Pursuant to KRS 13A.220(4), insert paragraphs (a) through (d) in Section 6(2) to clarify that any of four alternatives for shower drain pan construction may be used.

815 KAR 20:074. Installation standards for steel and wrought iron pipe. This administrative regulation was amended to delete the reference to "standard" and insert the reference to "specification" in Section 1 and the NECESSITY AND FUNCTION Section pursuant to KRS 13A.222(4)(a).

815 KAR 20:075. Installation recommendations for polybutylene tubing for hot and cold water distribution systems. This administrative regulation was amended to: (1) Delete the reference to "standard" and insert the reference to "specification" in the NECESSITY AND FUNCTION Section, Section 1(1) & (3) pursuant to KRS 13A.222(4)(a); and (2) Delete Section 4(2) in its entirety pursuant to KRS 13A.222(4)(a) because it is superfluous.

815 KAR 20:076. Installation recommendations for polybutylene

(PB) cold water building supply, yard piping and tubing. This administrative regulation was amended to: (1) Delete the reference to "standard" and insert the reference to "specification" in the NECESSITY AND FUNCTION Section, and Section 1(1) pursuant to KRS 13A.222(4)(a); and (2) Insert the word "administrative" before the word "regulation" where necessary pursuant to KRS 13A.010(2).

815 KAR 20:077. Storage and installation of aluminum soil, waste, vent and storm water piping and fittings. This administrative regulation was amended to: (1) Delete the reference to "standard" and insert the reference to "specification" in the NECESSITY AND FUNCTION Section, and Section 1 pursuant to KRS 13A.222(4)(a); (2) Insert the words "shall not" in Section 3(1) to designate a mandatory obligation pursuant to KRS 13A.222(4)(b); and (3) Delete the sentence in Section 4(2) relating to tungsten carbide blades in its entirety pursuant to KRS 13A.222(4)(a).

815 KAR 20:100. Joints and connections. This administrative regulation was amended to delete the reference to "standards" and insert the reference to "specification" in the NECESSITY AND FUNCTION Section, in Section 2 and in Section 5(2).

The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:

Legislative Research Commission: Capital Construction and Equipment Purchase

1 KAR 3:006. Repeal of 1 KAR 3:005.

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:005. Lender participation.

Kentucky Higher Education Assistance Authority

11 KAR 4:015. Repeal of 11 KAR 4:010.

11 KAR 4:020. Disapproval, assessment of liabilities, limitation, suspension or termination of eligibility to participate in authority programs. David Gray, Kentucky Association of Career Colleges and Schools, objected to this administrative regulation. He stated that a detail of all of his objections appeared in the Statement of Consideration filed after the public hearing held on this administrative regulation. He limited his comments to two issues: (1) the delegation of authority to the Authority's personnel to take emergency action to withhold program funds; and (2) the requirement that an educational institution obtain a bond. He stated that the delegation of authority was improper; that the decision should be made by the Authority; that an administrative body could delegate only ministerial, not substantive or quasi-judicial, duties; and that the State Board for Proprietary Education already required a bond and contribution to a student protection fund.

Chairman Kerr stated that issues relating to permissive delegation by an administrative body to its subordinates had been raised. At the request of the Chairman, Subcommittee staff explained that the question of permissible delegation was not restricted to emergency action under Section 8, but applied to a number of other sections in which duties had been delegated to Authority personnel; these issues had been discussed with Authority personnel; Subcommittee staff had not yet completed its research on the issue; a memorandum would be submitted to the Chairman and, with his approval, to Authority personnel and Mr. Gray. Chairman Kerr stated that, upon completion of the research and discussions among interested parties, the Subcommittee would place this administrative regulation on the agenda of a future meeting. The Subcommittee approved the Chairman's recommendation that this administrative regulation be approved under the conditions stated.

Personnel Board

101 KAR 1:325. Probationary periods.

Kentucky Employees' Retirement System: General Rules

105 KAR 1:150. Installment purchase procedures.

105 KAR 1:160. Sick leave plans.

105 KAR 1:215. Administrative hearing.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:010. Fees.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Inspection and Enforcement

405 KAR 12:020. Enforcement. (Amended After Hearing) (Deferred from October)

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:150. Human immunodeficiency virus education, initial professional licensure. Chairman Kerr asked why the Cabinet was deleting the survey of prelicensure programs to determine compliance with this administrative regulation. Cabinet personnel responded that the survey of HIV education programs was intended to be a one time survey only. Each regulated entity is required to take an HIV education program approved by the Cabinet. This administrative regulation is intended to set out requirements for Cabinet approval. Cabinet personnel stated that if: (1) new courses became available the Cabinet would monitor those programs to assure compliance with this administrative regulation; and (2) a course was altered, the Cabinet would review it.

OTHER BUSINESS:

A motion was made by Representative Bruce and approved by the subcommittee to review 302 KAR 34:060. Criteria for maintaining license under forward pricing contract. at its December 1992 subcommittee meeting.

The Subcommittee determined that the following emergency administrative regulation complied with KRS Chapter 13A:

Department of State: Registry of Election Finance: Reports and Forms

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

The following administrative regulation was withdrawn by the promulgating agency at the Subcommittee meeting:

Justice Cabinet: Kentucky Community Corrections Grant Program

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

The following administrative regulations were deferred to the December meeting upon agreement by the promulgating agency and the Subcommittee:

Board of Claims

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

Finance and Administration Cabinet: Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel.

Board of Pharmacy

201 KAR 2:195. Impaired pharmacists.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The Subcommittee adjourned at 3:00 p.m. until December 1, 1992 at 2 p.m. in Room 131 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of October 22, 1992

The Interim Joint Committee on Appropriations and Revenue, at its October 22, 1992 meeting, approved three administrative regulations referred to the Committee at the October 5-6, 1992 meeting of the Legislative Research Commission. The regulations were: 200 KAR 14:011 & E, 200 KAR 14:081 & E, and 200 KAR 14:091 & E, promulgated by the Finance and Administration Cabinet on behalf of the State Investment Commission, as amended at the request of the Administrative Regulation Review Subcommittee.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY
Meeting of October 7, 1992

Pursuant to KRS Chapter 13A, the Interim Joint Committee on Labor and Industry met on October 7 and considered 803 KAR 2:320 and 903 KAR 5:270 & E. The Committee expressed no objections to the administrative regulations.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS & PROFESSIONS
Meeting of October 30, 1992

The Interim Joint Committee on Business Organizations and Professions met on Friday, October 30, 1992, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Board of Examiners and Registration of Landscape Architects - 201 KAR 10:050 & E.
Board of Registration for Professional Engineers and Land Surveyors - 201 KAR 18:040 & E.

The Committee passed over 201 KAR 10:060* which according to the agency representative it had been withdrawn prior to the meeting.

The Committee adjourned at 2:20 p.m.

***COMPILER'S NOTE:** As of November 2, 1992, 201 KAR 10:060 **has not been withdrawn**. Since this regulation was on the agenda of the Interim Joint Committee on Business Organizations and Professions at its October 30, 1992 meeting, this regulation became effective October 30, 1992. According to the report of the Administrative Regulations Review Subcommittee for its October 5 and 6, 1992 meeting, the agency agreed to repeal this regulation at a later date.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of November 4, 1992

The Interim Joint Committee on Transportation met on Wednesday, November 4, 1992, and submits this report:

The Committee voted to pass over the following administrative regulation that the Administrative Regulation Review Subcommittee found to be deficient pursuant to KRS 13A.120(2)(i):

602 KAR 50:020

The Committee determined that the following administrative regulations complied with KRS Chapter 13A: 601 KAR 40:020, 602 KAR 50:010, 602 KAR 50:030, 602 KAR 50:050, 602 KAR 50:060, 602 KAR 50:070, 602 KAR 50:090, 602 KAR 50:100, 602 KAR 50:110, 602 KAR 50:120, 603 KAR 3:060.

The Committee adjourned at 1:35 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F2

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 F10

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 E18

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.

Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 18:040E	3310	4-27-92
Replaced		10-30-92
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:

Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 10:050		
Amended	3497	(See VOLUME 19)
201 KAR 10:060		
Amended	3209	10-30-92
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.

Regulation Number	19 Ky.R Page No.	Effective Date
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
32 KAR 2:050E	1052	10-6-92
32 KAR 2:060E	1052	10-6-92
32 KAR 2:070E	1053	10-6-92
32 KAR 2:080E	1054	10-6-92
101 KAR 1:325E	860	8-18-92
200 KAR 14:011E	362	7-14-92
Replaced	1065	10-22-92
200 KAR 14:081E	363	7-14-92
Replaced	1066	10-22-92
200 KAR 14:091E	364	7-14-92
Replaced	1068	10-22-92
201 KAR 2:105E	862	8-18-92
201 KAR 10:050E	4	5-18-92
Replaced	1068	10-30-92
201 KAR 22:135E	1299	11-2-92
301 KAR 2:044E	864	8-18-92
Replaced	1074	11-9-92
301 KAR 2:220E	1054	9-22-92
401 KAR 49:009E	4	6-8-92
Expired		10-28-92
401 KAR 50:037E	681	7-31-92
Replaced	542	11-9-92
405 KAR 7:001E	682	7-24-92
405 KAR 7:091E	686	7-24-92
405 KAR 7:092E	689	7-24-92
405 KAR 12:020E	697	7-24-92
415 KAR 1:050E	1299	11-9-92
415 KAR 1:060E	1301	11-9-92
415 KAR 1:070E	1303	11-9-92
415 KAR 1:080E	1306	11-9-92
415 KAR 1:090E	1307	11-9-92
415 KAR 1:100E	1308	11-9-92
415 KAR 1:120E	1309	11-9-92
500 KAR 10:001E	1058	9-22-92
500 KAR 10:010E	1059	9-22-92
Expired		11-5-92
500 KAR 10:020E	1059	9-22-92
500 KAR 10:030E	1060	9-22-92
500 KAR 10:040E	1060	9-22-92
501 KAR 2:020E	1310	11-10-92
501 KAR 2:030E	1311	11-10-92
501 KAR 2:040E	1311	11-10-92
501 KAR 2:050E	1311	11-10-92
501 KAR 2:060E	1312	11-10-92
501 KAR 6:020E	5	5-22-92
Replaced		8-1-92
Resubmitted	701	7-23-92
Replaced	790	11-9-92
501 KAR 6:060E	365	6-24-92
Replaced	501	10-8-92
601 KAR 40:020E	366	7-13-92
Replaced	942	11-4-92
603 KAR 3:060E	368	7-8-92
Replaced	944	11-4-92
603 KAR 5:110E	369	7-15-92
603 KAR 5:300E	372	7-13-92
Died*		9-10-92
704 KAR 3:303E	7	6-12-92
Replaced		8-1-92
704 KAR 3:405E	1061	9-22-92
704 KAR 3:440E	7	5-22-92
Replaced	397	8-1-92
780 KAR 3:020E	9	6-11-92
Replaced		8-1-92
901 KAR 5:050E	372	7-2-92
Replaced	298	8-28-92
902 KAR 10:021E	372	7-2-92
Replaced	298	8-28-92
902 KAR 10:035E	702	7-24-92
Replaced	1085	11-9-92
902 KAR 10:060E	372	6-30-92
Replaced	299	8-28-92
902 KAR 10:121E	373	6-30-92
Replaced	300	8-28-92
902 KAR 10:130E	373	6-30-92
Replaced	301	8-28-92
902 KAR 20:004E	374	7-10-92
Replaced	1085	11-9-92
902 KAR 20:320E	1313	10-16-92
902 KAR 20:330E	1324	10-16-92
902 KAR 45:110E	378	6-30-92
Replaced	732	8-28-92
902 KAR 45:120E	379	6-30-92
Replaced	302	8-28-92
902 KAR 100:012E	10	6-4-92
Replaced	303	8-28-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
902 KAR 105:020E	10	6-4-92
Replaced	733	8-28-92
903 KAR 5:270E	379	6-30-92
Replaced	519	10-7-92
903 KAR 5:290E	12	6-4-92
Replaced	306	8-28-92
904 KAR 2:006E	380	7-10-92
Replaced	520	10-8-92
904 KAR 2:016E	1327	10-16-92
904 KAR 2:116E	1334	10-16-92
905 KAR 2:100E	703	7-24-92
Replaced	1090	11-9-92
906 KAR 1:110E	12	5-22-92
Replaced	424	8-28-92
907 KAR 1:013E	14	6-4-92
Withdrawn		7-10-92
Resubmitted	385	7-10-92
Replaced	958	11-9-92
907 KAR 1:025E	706	7-24-92
Replaced	827	11-9-92

ORDINARY REGULATIONS:

1 KAR 3:006	1012	
1 KAR 6:020	1231	
11 KAR 3:005	1012	
11 KAR 3:100		
Amended	414	8-20-92
11 KAR 4:015	1014	
11 KAR 4:020		
Amended	428	
Amended	921	
11 KAR 4:060	531	10-1-92
11 KAR 5:001		
As Amended	388	8-1-92
11 KAR 5:130		
As Amended	389	8-1-92
11 KAR 11:020		
Repealed	389	8-1-92
11 KAR 12:010		
Amended	433	10-1-92
11 KAR 12:020		
Amended	435	10-1-92
11 KAR 12:030		
Amended	436	10-1-92
11 KAR 12:040		
Amended	437	10-1-92
11 KAR 12:050		
Amended	438	10-1-92
11 KAR 12:060		
Amended	439	10-1-92
11 KAR 12:070		
Amended	440	10-1-92
11 KAR 12:080		
Repealed	532	10-1-91
11 KAR 12:081	532	10-1-92
11 KAR 12:090		
Amended	442	10-1-92
32 KAR 1:020		
Recodified from 801 KAR 1:005		8-5-92
32 KAR 1:030		
Recodified from 801 KAR 1:010		8-5-92
32 KAR 1:040		
Recodified from 801 KAR 1:020		8-5-92
32 KAR 1:050		
Recodified from 801 KAR 1:040		8-5-92
32 KAR 1:060		
Recodified from 801 KAR 1:070		8-5-92
32 KAR 1:070		
Recodified from 801 KAR 1:080		8-5-92
32 KAR 1:080		
Recodified from 801 KAR 1:090		8-5-92
32 KAR 1:090		
Recodified from 801 KAR 1:110		8-5-92
32 KAR 2:010		
Recodified from 801 KAR 2:010		8-5-92
32 KAR 2:020	1232	
32 KAR 2:030	1233	
32 KAR 2:040	1234	
32 KAR 2:050	1236	
32 KAR 2:060	1237	
32 KAR 2:070	1238	
32 KAR 2:080	1239	
40 KAR 2:001	532	
As Amended	1063	11-9-92
40 KAR 2:030	533	
Withdrawn		10-1-92
40 KAR 2:040	534	
As Amended	1063	11-9-92
40 KAR 2:050	535	
As Amended	1064	11-9-92
40 KAR 2:060	537	
As Amended	1065	11-9-92
45 KAR 1:060	1015	
As Amended	1337	
101 KAR 1:325		
Amended	961	
101 KAR 1:365		
Amended	80	
As Amended	866	10-8-92
101 KAR 1:375		
Amended	81	
As Amended	867	10-8-92
101 KAR 2:046		
As Amended	389	8-1-92
102 KAR 1:185		
Amended	1097	
105 KAR 1:020		
Amended	962	
105 KAR 1:040		
Amended	1398	
105 KAR 1:120		
Amended	1400	
105 KAR 1:150		
Amended	965	
105 KAR 1:160		
Amended	966	
105 KAR 1:180		
Amended	967	
As Amended	1337	
105 KAR 1:210		
Amended	968	
As Amended	1338	
105 KAR 1:215		
Amended	969	
105 KAR 1:250	1016	
As Amended	1339	
105 KAR 1:260	1017	
As Amended	1339	
108 KAR 1:010		
Amended	787	
Amended	1094	
200 KAR 2:006		
Amended	971	
200 KAR 14:011	537	
As Amended	1065	10-22-92
200 KAR 14:081	538	
As Amended	1066	10-22-92
200 KAR 14:091	540	
As Amended	1068	10-22-92
201 KAR 2:010		
Amended	443	10-8-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 2:020		
Amended	443	10-8-92
201 KAR 2:050		
Amended	444	11-9-92
201 KAR 2:105		
Amended	445	10-8-92
201 KAR 2:195	1018	
201 KAR 2:205	1018	
As Amended	1340	
201 KAR 2:210	1240	
201 KAR 2:215	1462	
201 KAR 7:015	1241	
201 KAR 7:075		
Amended	1097	
201 KAR 10:050		
As Amended	1068	10-30-92
201 KAR 17:090		
Amended	447	10-8-92
201 KAR 17:091		
Amended	449	10-8-92
201 KAR 18:040		
As Amended	1069	10-30-92
201 KAR 20:200		
As Amended	18	7-4-92
201 KAR 20:205		
Repealed	20	7-4-92
201 KAR 20:210		
Repealed	20	7-4-92
201 KAR 20:215		
As Amended	18	7-4-92
201 KAR 20:220		
As Amended	20	7-4-92
201 KAR 20:400	1242	
201 KAR 21:095	1243	
201 KAR 21:100	1243	
201 KAR 22:070		
Amended	450	
As Amended	868	10-8-92
201 KAR 22:135		
Amended	83	
As Amended	868	10-8-92
Amended	1402	
201 KAR 23:020		
Amended	1100	
201 KAR 29:015	1244	
201 KAR 29:020	834	11-9-92
201 KAR 29:030	835	
As Amended	1070	11-9-92
201 KAR 29:040	836	
As Amended	1071	11-9-92
201 KAR 29:050	838	
As Amended	1072	11-9-92
201 KAR 29:060	839	
As Amended	1073	11-9-92
201 KAR 31:010	1019	
202 KAR 1:010	1464	
301 KAR 1:015		
Amended	451	9-23-92
301 KAR 1:020		
Amended	452	9-23-92
301 KAR 1:060		
Amended	453	9-23-92
301 KAR 1:075		
Amended	454	9-23-92
301 KAR 1:085		
Amended	455	9-23-92
301 KAR 1:160		
Amended	456	9-23-92
301 KAR 1:200		
Amended	457	9-23-92
301 KAR 2:044		
Amended	788	
As Amended	1074	11-9-92
301 KAR 2:140		
Amended	974	
Withdrawn		10-22-92
Amended	1403	
301 KAR 2:220		
Amended	977	
As Amended	1340	
301 KAR 3:021		
Repealed	391	7-22-92
301 KAR 3:022		
As Amended	391	7-22-92
301 KAR 3:090	541	9-23-92
301 KAR 4:020		
Amended	982	
As Amended	1344	
302 KAR 16:080		
As Amended	712	8-27-92
302 KAR 20:058		
Amended	459	
As Amended	1075	11-9-92
302 KAR 34:060	840	
As Amended	1076	11-9-92
401 KAR 5:010		
Amended	415	
As Amended	717	8-27-92
401 KAR 8:030		
Amended	419	8-27-92
401 KAR 31:010		
Amended	84	
Amended	735	9-23-92
401 KAR 31:040		
Amended	94	
Amended	744	9-23-92
401 KAR 31:060		
Amended	106	9-23-92
401 KAR 31:170		
Amended	109	
Amended	754	9-23-92
401 KAR 34:020		
Amended	117	9-23-92
401 KAR 34:050		
Amended	120	9-23-92
401 KAR 34:060		
Amended	123	
Amended	761	9-23-92
401 KAR 34:070		
Amended	132	9-23-92
401 KAR 34:190		
Amended	137	9-23-92
401 KAR 35:020		
Amended	143	9-23-92
401 KAR 35:050		
Amended	146	9-23-92
401 KAR 35:070		
Amended	149	9-23-92
401 KAR 35:190		
Amended	154	9-23-92
401 KAR 36:030		
Amended	160	
Amended	769	9-23-92
401 KAR 37:010		
Amended	162	
Amended	770	9-23-92
401 KAR 37:030		
Amended	169	
Amended	776	9-23-92
401 KAR 37:040		
Amended	172	9-23-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
401 KAR 37:050		
Amended	175	9-23-92
401 KAR 38:010		
Amended	176	9-23-92
401 KAR 38:020		
Amended	179	
Amended	778	9-23-92
401 KAR 38:040		
Amended	182	9-23-92
401 KAR 38:050		
Amended	187	9-23-92
401 KAR 38:060		
Amended	191	9-23-92
401 KAR 38:070		
Amended	195	9-23-92
401 KAR 45:010		
As Amended	22	6-24-92
401 KAR 45:070		
As Amended	23	6-24-92
401 KAR 49:010		
Repealed	780	9-23-92
401 KAR 49:011	330	
Amended	780	9-23-92
401 KAR 49:040		
Amended	198	
Amended	782	9-23-92
401 KAR 49:060		
Repealed	780	9-23-92
401 KAR 49:070		
Repealed	780	9-23-92
401 KAR 49:220	1245	
401 KAR 49:230	1247	
401 KAR 50:037	542	11-9-92
401 KAR 51:010		
Amended	1101	
401 KAR 51:052		
Amended	1105	
401 KAR 59:175		
Amended	1114	
401 KAR 59:430	1249	
401 KAR 59:460	1251	
401 KAR 59:635	1253	
401 KAR 59:675	1254	
401 KAR 59:705	1256	
401 KAR 59:725	1257	
401 KAR 59:740	1258	
401 KAR 59:745	1260	
401 KAR 59:750	1261	
401 KAR 59:755	1262	
401 KAR 61:085		
Amended	1116	
401 KAR 63:031		
Amended	1118	
401 KAR 63:035	1466	
405 KAR 1:007	544	
As Amended	1077	11-9-92
405 KAR 3:007	546	
As Amended	1077	11-9-92
405 KAR 7:001		
Amended	460	
Amended	925	
As Amended	1345	
405 KAR 7:030		
Amended	464	11-9-92
405 KAR 7:091	547	
Amended	928	
As Amended	1348	
405 KAR 7:092	551	
Amended	931	
As Amended	1352	
405 KAR 8:001		
Amended	467	
As Amended	1360	
405 KAR 8:030		
As Amended	24	6-24-92
405 KAR 8:040		
As Amended	34	6-24-92
405 KAR 10:001		
Amended	473	
Withdrawn		10-26-92
405 KAR 12:001		
Amended	475	
Withdrawn		10-26-92
405 KAR 12:020		
Amended	477	
Amended	939	
405 KAR 16:001		
Amended	482	
Withdrawn		10-26-92
405 KAR 18:001		
Amended	487	
Withdrawn		10-26-92
405 KAR 20:001		
Amended	492	
Withdrawn		10-26-92
405 KAR 24:001		
Amended	495	
Withdrawn		10-26-92
415 KAR 1:050	1471	
415 KAR 1:060	1473	
415 KAR 1:070	1476	
415 KAR 1:080	1479	
415 KAR 1:090	1482	
415 KAR 1:100	1485	
415 KAR 1:120	1486	
500 KAR 1:010		
Amended	1121	
500 KAR 1:020		
Amended	1122	
500 KAR 1:030		
Amended	1124	
500 KAR 10:001	332	
Withdrawn		9-4-92
Resubmitted	1020	
As Amended	1365	
500 KAR 10:010	333	
Withdrawn		9-4-92
Resubmitted	1020	
Withdrawn		11-5-92
500 KAR 10:020	333	
Withdrawn		9-4-92
Resubmitted	1021	
As Amended	1366	
500 KAR 10:030	334	
Withdrawn		9-4-92
Resubmitted	1022	
As Amended	1366	
500 KAR 10:040	335	
Withdrawn		9-4-92
Resubmitted	1022	
As Amended	1367	
501 KAR 2:020	1488	
501 KAR 2:030	1489	
501 KAR 2:040	1490	
501 KAR 2:050	1490	
501 KAR 2:060	1491	
501 KAR 6:020		
Amended	200	9-10-92
Amended	790	11-9-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 6:030		
Amended	202	9-10-92
Amended	498	10-8-92
Amended	983	
Amended	1125	
501 KAR 6:040		
Amended	500	10-8-92
Amended	792	11-9-92
501 KAR 6:060		
Amended	204	9-10-92
Amended	501	10-8-92
Amended	793	11-9-92
Amended	984	
501 KAR 6:070		
Amended	502	10-8-92
Amended	986	
Amended	1406	
501 KAR 6:110		
Amended	205	9-10-92
501 KAR 6:120		
Amended	987	
Amended	1127	
501 KAR 6:130		
Amended	207	9-10-92
Amended	1129	
Amended	1407	
501 KAR 6:140		
Amended	794	11-9-92
Amended	1408	
501 KAR 6:160		
Amended	989	
600 KAR 1:070		
Amended	208	
As Amended	869	10-8-92
600 KAR 2:010		
Amended	1410	
600 KAR 3:010		
Amended	209	
As Amended	869	10-8-92
600 KAR 4:010		
Amended	1130	
600 KAR 4:020		
Amended	1134	
601 KAR 1:005		
Amended	225	
As Amended	885	10-8-92
Amended	1411	
601 KAR 1:015		
Amended	227	
As Amended	887	10-8-92
601 KAR 1:016		
Amended	229	
As Amended	889	10-8-92
601 KAR 1:025		
Amended	1413	
601 KAR 9:130		
Amended	503	10-8-92
601 KAR 9:145		
Repealed	503	10-8-92
601 KAR 11:040		
As Amended	45	7-4-92
Amended	1460	
601 KAR 40:020		
Amended	506	
Amended	942	11-4-92
602 KAR 50:010		
Amended	796	
As Amended	1077	11-4-92
602 KAR 50:020		
Amended	799	
As Amended	1080	11-4-92
602 KAR 50:030		
Amended	800	11-4-92
602 KAR 50:050		
Amended	801	11-4-92
602 KAR 50:060		
Amended	802	11-4-92
602 KAR 50:070		
Amended	803	11-4-92
602 KAR 50:080		
Repealed	804	11-4-92
602 KAR 50:090		
Amended	804	11-4-92
602 KAR 50:100		
Amended	805	11-4-92
602 KAR 50:110		
Amended	806	11-4-92
As Amended		
602 KAR 50:120		
Amended	807	11-4-92
603 KAR 3:060	560	
Amended	944	11-4-92
603 KAR 5:070		
Amended	231	
As Amended	891	10-8-92
603 KAR 5:075		
Amended	235	
As Amended	894	10-8-92
603 KAR 5:105		
Amended	237	
As Amended	896	10-8-92
603 KAR 5:110		
Amended	507	
Amended	944	
As Amended	1367	
603 KAR 5:112		
Amended	239	
As Amended	897	10-8-92
603 KAR 5:260	335	
As Amended	899	10-8-92
603 KAR 5:270	338	
As Amended	901	10-8-92
603 KAR 5:300	561	
Died*		9-10-92
701 KAR 5:035	654	
As Amended	902	10-1-92
701 KAR 5:075	1023	
As Amended	1370	
701 KAR 5:085	655	
As Amended	903	10-1-92
702 KAR 1:001		
Amended	1418	
702 KAR 1:005		
Recodified as 704 KAR 3:450		8-19-92
702 KAR 1:035		
As Amended	392	
As Amended	1081	11-9-92
702 KAR 3:190		
Amended	511	
As Amended	903	10-1-92
702 KAR 3:245	1492	
702 KAR 3:250		
Amended	512	10-1-92
702 KAR 3:260	1024	
As Amended	1370	
702 KAR 5:080		
Amended	990	
As Amended	1371	
702 KAR 5:120		
Amended	513	
As Amended	904	10-1-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
702 KAR 7:010		
Amended	992	
As Amended	1374	
702 KAR 7:050		
As Amended	392	8-1-92
702 KAR 7:065		
Amended	514	10-1-92
Amended	1419	
703 KAR 4:020		
Recodified from 704 KAR 3:006		9-29-92
703 KAR 4:030		
Recodified from 704 KAR 3:007		9-29-92
704 KAR 3:006		
Recodified as 703 KAR 4:020		9-29-92
704 KAR 3:007		
Recodified as 703 KAR 4:030		9-29-92
704 KAR 3:035		
As Amended	394	8-1-92
704 KAR 3:325		
As Amended	395	8-1-92
704 KAR 3:345		
Amended	515	
Amended	947	
As Amended	1081	11-9-92
704 KAR 3:390		
Amended	994	
As Amended	1375	
704 KAR 3:405	1025	
As Amended	1377	
704 KAR 3:440		
As Amended	397	8-1-92
704 KAR 3:450		
Recodified from 702 KAR 1:005		8-19-92
Amended	1420	
704 KAR 7:056	656	
As Amended	905	11-9-92
704 KAR 7:110	1494	
704 KAR 10:050		
Amended	1427	
704 KAR 20:005		
Amended	1138	
704 KAR 20:165		
Amended	1139	
704 KAR 20:210		
Amended	1140	
704 KAR 20:585	1264	
704 KAR 20:660	657	10-1-92
725 KAR 2:020		
Repealed	48	7-4-92
725 KAR 2:060		
As Amended	48	7-4-92
725 KAR 2:070		
As Amended	49	7-4-92
745 KAR 1:035		
Amended	996	
As Amended	1379	
760 KAR 1:010	1267	
760 KAR 1:020	1268	
760 KAR 1:030	1269	
760 KAR 1:040	1269	
760 KAR 1:050	1270	
760 KAR 1:060	1271	
780 KAR 2:100		
As Amended	50	7-4-92
780 KAR 2:110		
As Amended	52	7-4-92
780 KAR 2:120		
As Amended	52	7-4-92
780 KAR 9:130	339	
As Amended	721	8-20-92
781 KAR 1:020		
Amended	1428	
781 KAR 1:030		
Amended	517	
Amended	949	11-9-92
Amended	1432	
781 KAR 1:060		
Amended	1434	
801 KAR 1:005		
Recodified as 32 KAR 1:020		8-5-92
801 KAR 1:010		
Recodified as 32 KAR 1:030		8-5-92
801 KAR 1:020		
Recodified as 32 KAR 1:040		8-5-92
801 KAR 1:040		
Recodified as 32 KAR 1:050		8-5-92
801 KAR 1:070		
Recodified as 32 KAR 1:060		8-5-92
801 KAR 1:080		
Recodified as 32 KAR 1:070		8-5-92
801 KAR 1:090		
Recodified as 32 KAR 1:080		8-5-92
801 KAR 1:110		
Recodified as 32 KAR 1:090		8-5-92
801 KAR 2:010		
Recodified as 32 KAR 2:010		8-5-92
803 KAR 2:015		
Amended	242	
As Amended	906	
Withdrawn		10-6-92
803 KAR 2:306		
Amended	250	
As Amended	914	
Withdrawn		10-6-92
803 KAR 2:310		
Amended	252	
As Amended	915	
Withdrawn		10-6-92
803 KAR 2:313		
Amended	255	
As Amended	918	
Withdrawn		10-6-92
803 KAR 2:317		
Amended	257	
As Amended	918	
Withdrawn		10-6-92
803 KAR 25:011		
Amended	808	
Withdrawn		10-6-92
Amended	1436	
803 KAR 25:012	841	
Withdrawn		10-6-92
Resubmitted	1495	
803 KAR 25:091	1026	
Amended	1396	
803 KAR 25:095	842	
Withdrawn		10-6-92
Resubmitted	1496	
803 KAR 25:096	843	
Withdrawn		10-6-92
Resubmitted	1498	
804 KAR 1:130	658	9-14-92
804 KAR 5:070		
Amended	424	
As Amended	721	9-1-92
804 KAR 9:040		
As Amended	919	9-14-92
805 KAR 5:030	845	
As Amended	1084	11-9-92
805 KAR 7:030		
Amended	1141	
806 KAR 2:070		
Amended	258	9-10-92

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
806 KAR 2:110	1028	
As Amended	1379	
806 KAR 12:095	340	
Amended	783	
As Amended	1380	
806 KAR 17:066		
Amended	259	9-10-92
806 KAR 17:081	1029	
806 KAR 37:010	343	
As Amended	722	9-10-92
807 KAR 5:001		
Amended	1142	
808 KAR 1:130	1271	
808 KAR 7:040	1272	
808 KAR 10:270		
Amended	1152	
808 KAR 10:280	1273	
808 KAR 13:010	1275	
810 KAR 1:018		
Amended	1153	
810 KAR 1:024		
As Amended	398	8-1-92
810 KAR 1:025		
As Amended	401	8-1-92
Amended	1155	
810 KAR 1:026		
As Amended	403	8-1-92
810 KAR 1:027		
As Amended	406	8-1-92
Amended	1158	
810 KAR 1:028		
As Amended	408	8-1-92
810 KAR 1:029		
As Amended	408	8-1-92
811 KAR 1:180		
Amended	1160	
811 KAR 2:020		
Amended	1162	
811 KAR 1:215		
Amended	293	
As Amended	728	9-1-92
815 KAR 7:025		
Amended	1165	
815 KAR 10:040		
Amended	1172	
815 KAR 20:020		
Amended	295	
As Amended	730	9-10-92
Amended	997	
As Amended	1383	
815 KAR 20:060		
Amended	999	
As Amended	1385	
815 KAR 20:070		
Amended	1002	
As Amended	1387	
815 KAR 20:071		
Amended	1190	
815 KAR 20:074		
Amended	1003	
As Amended	1389	
815 KAR 20:075		
Amended	1004	
As Amended	1389	
815 KAR 20:076		
Amended	1007	
As Amended	1391	
815 KAR 20:077		
Amended	1008	
As Amended	1393	
815 KAR 20:090		
Amended	411	8-1-92
Amended	1192	
815 KAR 20:100		
Amended	1010	
As Amended	1394	
815 KAR 20:110		
Amended	1195	
815 KAR 20:120		
Amended	816	11-9-92
815 KAR 20:130		
Amended	822	11-9-92
815 KAR 25:010		
Amended	1197	
815 KAR 25:030	1276	
815 KAR 30:010		
Amended	825	11-9-92
815 KAR 30:040		
Repealed	847	11-9-92
815 KAR 30:041	847	11-9-92
901 KAR 5:050		
Amended	298	8-28-92
902 KAR 2:150		
Amended	826	
Amended	1095	
902 KAR 2:160		
Amended	1444	
902 KAR 2:170	351	
Amended	786	10-8-92
902 KAR 10:021		
Amended	298	8-28-92
902 KAR 10:035	847	
As Amended	1085	11-9-92
902 KAR 10:045	1500	
902 KAR 10:060		
Amended	299	8-28-92
902 KAR 10:085		
As Amended	53	6-24-92
902 KAR 10:121		
Amended	300	8-28-92
902 KAR 10:130		
Amended	301	8-28-92
902 KAR 20:004	659	
Amended	951	
As Amended	1085	11-9-92
902 KAR 20:320		
Amended	1202	
902 KAR 20:330		
Amended	1214	
902 KAR 45:110		
Amended	301	
As Amended	732	8-28-92
902 KAR 45:120		
Amended	302	8-28-92
902 KAR 100:012		
Amended	303	8-28-92
902 KAR 105:020		
Amended	305	
As Amended	733	8-28-92
903 KAR 5:270		
Amended	519	10-7-92
903 KAR 5:290		
Amended	306	8-28-92
904 KAR 2:006		
Amended	520	10-8-92
904 KAR 2:015		
Amended	1445	
904 KAR 2:016		
As Amended	68	6-24-92
Amended	1217	
904 KAR 2:035		
Amended	1449	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
904 KAR 2:116		
Amended	1225	
904 KAR 3:010		
Amended	307	8-28-92
904 KAR 3:020		
Amended	311	8-28-92
904 KAR 3:025		
Amended	315	8-28-92
904 KAR 3:035		
Amended	317	8-28-92
904 KAR 3:050		
Amended	1228	
905 KAR 1:350	1278	
905 KAR 2:070		
Repealed	703	7-24-92
905 KAR 2:080		
As Amended	74	6-24-92
905 KAR 2:100	663	
Amended	954	
As Amended	1090	11-9-92
905 KAR 8:230	1502	
906 KAR 1:110		
Amended	424	8-28-92
907 KAR 1:013		
Amended	321	
Withdrawn		7-10-92
Amended	525	
Amended	958	11-9-92
907 KAR 1:025		
Amended	827	11-9-92
907 KAR 1:031		
Amended	1451	
907 KAR 1:045		
Amended	323	8-28-92
907 KAR 1:102		
Amended	1453	
907 KAR 1:104		
Amended	1454	
907 KAR 1:370		
Amended	528	10-8-92
Amended	1454	
907 KAR 1:376		
Amended	325	8-28-92
907 KAR 1:382		
Amended	326	8-28-92
Amended	1455	
907 KAR 1:408		
Amended	327	8-28-92
907 KAR 1:412		
Amended	327	8-28-92
907 KAR 1:416		
Amended	328	8-28-92
907 KAR 1:418		
Amended	529	10-8-92
907 KAR 1:422		
Amended	530	10-8-92
907 KAR 1:424		
Repealed	786	10-8-92
907 KAR 1:425	351	
Amended	786	10-8-92
907 KAR 1:427		
Amended	1456	
907 KAR 1:430		
Amended	1457	
907 KAR 1:432		
Amended	329	8-28-92
907 KAR 1:450		
Amended	1457	
907 KAR 1:474		
Amended	1459	
907 KAR 1:525		
As Amended	78	6-24-92
907 KAR 1:550	352	8-28-92
Amended	1460	
907 KAR 1:555	353	8-28-92
Amended	1461	
907 KAR 1:575	1505	

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

KRS SECTION	REGULATION		KRS SECTION	REGULATION	
6.525	102 KAR	1:185	121.120	32 KAR	2:020
Chapter 7A	1 KAR	6:020		32 KAR	2:040
Chapter 13A	301 KAR	3:090		32 KAR	2:080
16.505-16.645	105 KAR	1:020	121.135	32 KAR	2:060
16.505-16.652	105 KAR	1:040	121.140	32 KAR	2:020
	105 KAR	1:160		32 KAR	2:030
	105 KAR	1:180		32 KAR	2:040
	105 KAR	1:210		32 KAR	2:050
	105 KAR	1:215	121.170	32 KAR	2:070
16.645	105 KAR	1:150	121.180	32 KAR	1:010E
17.165	905 KAR	2:100	121A.020	32 KAR	2:070
18A.075	101 KAR	1:325	Chapter 138	601 KAR	1:005
	101 KAR	1:365	146.410	405 KAR	8:001
	101 KAR	1:375	150.010	301 KAR	1:015
18A.0751	101 KAR	1:325		301 KAR	1:060
	101 KAR	1:365		301 KAR	1:075
	101 KAR	1:375		301 KAR	1:085
18A.095	101 KAR	1:365		301 KAR	1:160
18A.111	101 KAR	1:325		301 KAR	1:200
18A.205	702 KAR	1:035	150.015	301 KAR	2:044
18A.225	702 KAR	1:035		301 KAR	2:220
21.427	102 KAR	1:185		301 KAR	4:020
Chapter 41	200 KAR	14:081	150.025	301 KAR	1:085
Chapter 42	200 KAR	14:011	150.110	301 KAR	1:085
	200 KAR	14:081	150.150	301 KAR	1:160
	200 KAR	14:091	150.170	301 KAR	1:075
43.050	45 KAR	1:060		301 KAR	1:085
43.070	45 KAR	1:060		301 KAR	1:200
43.071	45 KAR	1:060		301 KAR	2:044
Chapter 44	200 KAR	2:006		301 KAR	2:140
44.070	108 KAR	1:010		301 KAR	2:220
44.080	108 KAR	1:010	150.175	301 KAR	1:020
44.086	108 KAR	1:010		301 KAR	1:075
44.090	108 KAR	1:010		301 KAR	1:085
Chapter 45	200 KAR	2:006		301 KAR	2:044
45.253	11 KAR	4:060		301 KAR	2:140
45.750-45.810	1 KAR	3:006		301 KAR	2:220
56.610-56.760	600 KAR	3:010	150.180	301 KAR	1:085
58.150	702 KAR	3:260	150.190	301 KAR	1:085
61.315	500 KAR	1:010	150.230	301 KAR	3:090
	500 KAR	1:020	150.235	301 KAR	1:075
	500 KAR	1:030		301 KAR	2:220
61.510-61.700	105 KAR	1:020	150.240	301 KAR	2:220
61.510-61.705	105 KAR	1:040	150.250	301 KAR	3:090
	105 KAR	1:160	150.300	301 KAR	4:020
	105 KAR	1:180	150.305	301 KAR	2:044
	105 KAR	1:210		301 KAR	2:140
	105 KAR	1:215		301 KAR	2:220
61.552	102 KAR	1:185	150.320	301 KAR	2:140
	105 KAR	1:150	150.330	301 KAR	2:140
	105 KAR	1:260		301 KAR	2:220
61.680	102 KAR	1:185	150.340	301 KAR	2:044
61.876	701 KAR	5:035		301 KAR	2:220
78.510-78.852	105 KAR	1:040	150.360	301 KAR	1:075
	105 KAR	1:160		301 KAR	2:044
	105 KAR	1:180		301 KAR	2:140
	105 KAR	1:210		301 KAR	2:220
	105 KAR	1:215	150.390	301 KAR	2:140
78.510-78.990	105 KAR	1:020	150.440	301 KAR	1:075
78.530-78.532	105 KAR	1:120	150.445	301 KAR	1:075
78.5302	105 KAR	1:250	150.470	301 KAR	1:020
78.535	105 KAR	1:120		301 KAR	1:075
78.545	105 KAR	1:150		301 KAR	1:200
Chapter 96A	600 KAR	4:010	150.510	301 KAR	1:085
	600 KAR	4:020	150.520	301 KAR	1:085
109.011	401 KAR	49:040	150.525	301 KAR	1:085
109.041	401 KAR	49:011	150.600	301 KAR	2:220

KRS SECTION	REGULATION
	301 KAR 4:020
150.603	301 KAR 2:044
	301 KAR 2:220
150.605	301 KAR 3:090
150.620	301 KAR 1:015
150.625	301 KAR 1:015
150.630	301 KAR 2:220
150.990	301 KAR 1:015
	301 KAR 1:075
	301 KAR 1:085
	301 KAR 1:200
	301 KAR 2:140
	301 KAR 2:220
151B.110	780 KAR 9:130
151B.125	780 KAR 9:130
151B.190	781 KAR 1:020
	781 KAR 1:030
	781 KAR 1:060
156.031	702 KAR 5:120
156.070	702 KAR 7:065
156.101	704 KAR 3:345
156.111	704 KAR 3:405
156.160	702 KAR 3:250
	702 KAR 5:080
	704 KAR 7:056
	704 KAR 10:050
156.200	702 KAR 3:260
156.400-156.476	704 KAR 3:450
157.100-157.190	704 KAR 3:450
157.226	702 KAR 3:250
157.280	702 KAR 5:120
157.3175	702 KAR 3:250
157.360	702 KAR 3:190
157.420	702 KAR 1:001
157.440	702 KAR 3:260
157.620	702 KAR 1:001
157.622	702 KAR 1:001
158.030	704 KAR 20:660
158.060	702 KAR 7:010
158.070	702 KAR 7:010
	704 KAR 3:390
158.160	902 KAR 2:170
158.6451	704 KAR 7:056
160.345	701 KAR 5:085
	702 KAR 3:245
	704 KAR 3:450
	704 KAR 7:110
160.350	704 KAR 3:405
160.380	701 KAR 5:075
160.476	702 KAR 3:260
160.477	702 KAR 3:260
161.011	780 KAR 9:130
161.020	704 KAR 20:005
	704 KAR 20:165
	704 KAR 20:210
	704 KAR 20:660
161.028	704 KAR 20:005
	704 KAR 20:165
	704 KAR 20:210
	704 KAR 20:585
	704 KAR 20:660
161.030	704 KAR 20:005
	704 KAR 20:165
	704 KAR 20:210
	704 KAR 20:660
161.042	704 KAR 20:005
161.100	704 KAR 20:210
161.120	704 KAR 20:585
161.158	702 KAR 1:035
161.600	102 KAR 1:185
161.608	102 KAR 1:185
162.080	702 KAR 3:260
162.090	702 KAR 3:260
164.410	760 KAR 1:060
164.740	11 KAR 3:005
164.746	11 KAR 4:015
	11 KAR 4:020
164.748	11 KAR 3:005
	11 KAR 4:020
	11 KAR 4:060
164A.300-164A.380	11 KAR 12:010
164A.305	11 KAR 12:040
164A.310	11 KAR 12:020
	11 KAR 12:070
164A.325	11 KAR 12:020
	11 KAR 12:050
	11 KAR 12:060
164A.330	11 KAR 12:030
	11 KAR 12:040
	11 KAR 12:050
	11 KAR 12:070
164A.335	11 KAR 12:020
	11 KAR 12:070
164A.340	11 KAR 12:050
164A.345	11 KAR 12:060
164A.350	11 KAR 12:090
164A.375	11 KAR 12:020
164A.560	760 KAR 1:010
	760 KAR 1:040
164A.565	760 KAR 1:010
164A.570	760 KAR 1:020
164A.575	745 KAR 1:035
	760 KAR 1:030
164A.605	760 KAR 1:050
164A.620	760 KAR 1:060
Chapter 174	600 KAR 4:010
	600 KAR 4:020
174.400-174.435	601 KAR 1:025
174.450	601 KAR 40:020
175.450	600 KAR 2:010
175.470	600 KAR 2:010
175.520	600 KAR 2:010
Chapter 176	600 KAR 4:010
	600 KAR 4:020
Chapter 177	600 KAR 4:010
	600 KAR 4:020
177.830-177.890	603 KAR 3:060
Chapter 183	600 KAR 4:010
	600 KAR 4:020
183.861	602 KAR 50:030
183.861-183.890	602 KAR 50:060
183.861-183.990	602 KAR 50:010
	602 KAR 50:020
	602 KAR 50:100
	602 KAR 50:110
183.865	602 KAR 50:030
183.867	602 KAR 50:030
	602 KAR 50:050
183.868	602 KAR 50:070
183.869	602 KAR 50:090
183.870	602 KAR 50:030
	602 KAR 50:090
183.871	602 KAR 50:090
	602 KAR 50:120

KRS SECTION	REGULATION
Chapter 186	601 KAR 9:130
Chapter 186A	601 KAR 9:130
189.222	603 KAR 5:070
	603 KAR 5:075
	603 KAR 5:270
	603 KAR 5:300
189.270	601 KAR 1:015
	601 KAR 1:016
	603 KAR 5:075
	603 KAR 5:105
	603 KAR 5:110
	603 KAR 5:112
	603 KAR 5:260
189.274	601 KAR 1:015
189.273	601 KAR 1:016
189.540	702 KAR 5:080
194.050	904 KAR 2:116
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:035
	904 KAR 3:050
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:160
196.035	501 KAR 2:020
	501 KAR 2:030
	501 KAR 2:040
	501 KAR 2:050
	501 KAR 2:060
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:160
197.020	501 KAR 2:020
	501 KAR 2:030
	501 KAR 2:040
	501 KAR 2:050
	501 KAR 2:060
Chapter 198B	815 KAR 7:025
	815 KAR 10:040
198B.040	815 KAR 20:100
198B.050	815 KAR 20:100
199.462	905 KAR 1:350
199.471	905 KAR 1:350
200.505	201 KAR 1:010
205.010	904 KAR 2:006
205.200	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:035
205.210	904 KAR 2:016
205.211	904 KAR 2:016
205.245	904 KAR 2:015
	904 KAR 2:035
205.520	904 KAR 2:035
	907 KAR 1:013
	907 KAR 1:025
	907 KAR 1:031
	907 KAR 1:045
	907 KAR 1:102
	907 KAR 1:104
	907 KAR 1:370
	907 KAR 1:376
	907 KAR 1:382
	907 KAR 1:408
	907 KAR 1:412
	907 KAR 1:416
	907 KAR 1:418
	907 KAR 1:422
	907 KAR 1:425
	907 KAR 1:427
	907 KAR 1:430
	907 KAR 1:432
	907 KAR 1:450
	907 KAR 1:474
	907 KAR 1:550
	907 KAR 1:555
	907 KAR 1:575
205.575	907 KAR 1:013
Chapter 211	902 KAR 10:045
211.180	902 KAR 2:150
	902 KAR 2:160
	902 KAR 2:170
211.350	902 KAR 10:060
211.760	902 KAR 10:045
211.840-211.852	902 KAR 100:012
211.870	902 KAR 105:020
211.890	902 KAR 105:020
211.972	902 KAR 10:130
211.990	902 KAR 10:045
	902 KAR 100:012
211.993	902 KAR 105:020
213.141	901 KAR 5:050
214.020	902 KAR 2:150
	902 KAR 2:160
214.610	902 KAR 2:160
214.615	902 KAR 2:150
216B.010-216B.130	902 KAR 20:004
	902 KAR 20:320
	902 KAR 20:330
216B.990	902 KAR 20:004
	902 KAR 20:320
	902 KAR 20:330
217.025	902 KAR 45:110
217.035	902 KAR 45:110
217.037	902 KAR 45:110
217.125	902 KAR 45:110
217.811	902 KAR 45:110
219.021	902 KAR 45:120
219.041	902 KAR 45:120
219.340	902 KAR 45:120
219.350	902 KAR 45:120
221.020	902 KAR 10:021
223.030	902 KAR 10:035
Chapter 224	401 KAR 49:009E
	401 KAR 63:035
224.01	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050

KRS SECTION	REGULATION
	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 49:011
224.01-010	401 KAR 63:035
224.10	401 KAR 31:060
	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
224.10-100	401 KAR 50:037
	401 KAR 59:430
	401 KAR 59:460
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750
	401 KAR 59:755
	401 KAR 63:031
	401 KAR 63:035
224.20-100	401 KAR 50:037
	401 KAR 51:010
	401 KAR 51:052
	401 KAR 59:175
	401 KAR 59:430
	401 KAR 59:460
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750

KRS SECTION	REGULATION
	401 KAR 59:755
	401 KAR 61:085
	401 KAR 63:031
	401 KAR 63:035
224.20-110	401 KAR 51:010
	401 KAR 51:052
	401 KAR 59:175
	401 KAR 59:430
	401 KAR 59:460
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750
	401 KAR 59:755
	401 KAR 61:085
	401 KAR 63:031
	401 KAR 63:035
224.20-120	401 KAR 51:010
	401 KAR 51:052
	401 KAR 59:175
	401 KAR 59:430
	401 KAR 59:460
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750
	401 KAR 59:755
	401 KAR 61:085
	401 KAR 63:031
	401 KAR 63:035
224.20-130	401 KAR 50:037
224.40	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
224.40-100	401 KAR 49:040
224.43	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:170
	401 KAR 34:020

KRS SECTION	REGULATION
	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 49:011
	401 KAR 49:220
	401 KAR 49:230
224.43-340	401 KAR 49:040
224.43-345	401 KAR 49:040
224.46	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
224.50	401 KAR 31:060
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 49:220
	401 KAR 49:230
224.60-120	415 KAR 1:050
	415 KAR 1:060
	415 KAR 1:070
	415 KAR 1:080
	415 KAR 1:090
	415 KAR 1:100
	415 KAR 1:120
224.60-130	415 KAR 1:050
	415 KAR 1:060
	415 KAR 1:070
	415 KAR 1:080

KRS SECTION	REGULATION
	415 KAR 1:090
	415 KAR 1:100
	415 KAR 1:120
224.60-140	415 KAR 1:050
	415 KAR 1:060
	415 KAR 1:070
	415 KAR 1:080
	415 KAR 1:090
	415 KAR 1:100
	415 KAR 1:120
224.70	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
224.99	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
Chapter 224A	401 KAR 49:009E
Chapter 227	815 KAR 10:040
227.550-227.660	815 KAR 25:010
	815 KAR 25:030
227.990	815 KRA 25:010
230.210	810 KAR 1:027
230.210-230.360	810 KAR 1:018
230.280	810 KAR 1:025
230.290	810 KAR 1:025
230.300	810 KAR 1:025
230.310	810 KAR 1:025
230.320	810 KAR 1:025
230.610-230.770	811 KAR 2:020
230.630	811 KAR 1:180
230.640	811 KAR 1:180
230.700	811 KAR 1:180
230.710	811 KAR 1:180
230.770	811 KAR 1:215
234.120	815 KAR 30:010
244.260	804 KAR 1:130
250.483	815 KAR 30:041
250.484	815 KAR 30:041
Chapter 257	302 KAR 20:058
Chapter 278	807 KAR 5:001

KRS SECTION	REGULATION
Chapter 281	601 KAR 1:005
281.600	601 KAR 11:040
Chapter 281A	601 KAR 11:040
287.820	808 KAR 1:130
289.905	808 KAR 7:040
289.910	808 KAR 7:040
Chapter 292	808 KAR 10:270
	808 KAR 10:280
304.2-110	806 KAR 2:110
304.2-210	806 KAR 12:095
304.2-210-304.2-230	806 KAR 2:070
304.3-200	806 KAR 12:095
304.12-010	806 KAR 12:095
304.12-020	806 KAR 17:066
	806 KAR 17:081
304.12-220	806 KAR 12:095
304.12-230	806 KAR 12:095
304.12-235	806 KAR 12:095
304.13-230	806 KAR 2:070
304.14-400	806 KAR 12:095
304.14-500-304.14-550	806 KAR 17:066
304.14-600-304.14-625	806 KAR 17:081
304.17-305	806 KAR 17:066
304.17-318	806 KAR 17:066
304.18-036	806 KAR 17:066
304.18-095	806 KAR 17:066
304.18-110	806 KAR 17:081
304.18-120	806 KAR 17:081
304.18-127	806 KAR 17:081
304.20-070	806 KAR 12:095
304.20-150-304.20-180	806 KAR 12:095
304.24-290	806 KAR 2:070
304.24-390	806 KAR 37:010
304.24-410	806 KAR 37:010
304.29-600	806 KAR 17:081
304.32-157	806 KAR 17:066
304.32-165	806 KAR 17:066
304.32-270	806 KAR 17:066
304.32-290	806 KAR 17:081
304.37-020	806 KAR 37:010
304.37-030	806 KAR 37:010
304.38-193	806 KAR 17:066
304.38-196	806 KAR 17:066
304.38-200	806 KAR 17:066
304.38-220	806 KAR 17:081
312.019	201 KAR 21:095
	201 KAR 21:100
312.200	201 KAR 21:095
314.011	201 KAR 20:400
314.021	201 KAR 20:400
314.091	201 KAR 20:400
314A.010-314A.225	201 KAR 29:020
314A.110	201 KAR 29:015
314A.115	201 KAR 29:050
	201 KAR 29:060
314A.220	201 KAR 29:015
314A.225	201 KAR 29:030
	201 KAR 29:040
Chapter 315	201 KAR 2:020
	201 KAR 2:050
	201 KAR 2:105
	201 KAR 2:195
	201 KAR 2:205
	201 KAR 2:210
	201 KAR 2:215
315.050	201 KAR 2:010
Chapter 318	815 KAR 20:020

KRS SECTION	REGULATION
	815 KAR 20:070
	815 KAR 20:071
	815 KAR 20:074
	815 KAR 20:075
	815 KAR 20:076
	815 KAR 20:077
	815 KAR 20:090
	815 KAR 20:100
	815 KAR 20:110
	815 KAR 20:120
	815 KAR 20:130
322A.050	201 KAR 31:010
327.040	201 KAR 22:135
327.050	201 KAR 22:135
327.060	201 KAR 22:070
334.050	201 KAR 7:015
334.080	201 KAR 7:015
334.090	201 KAR 7:015
334.110	201 KAR 7:015
334.150	201 KAR 7:075
334A.030	201 KAR 17:091
334A.170	201 KAR 17:090
335.010-335.160	201 KAR 23:020
335.990	201 KAR 23:020
Chapter 338	803 KAR 2:320
341.270	903 KAR 5:290
341.380	903 KAR 5:270
Chapter 342	803 KAR 25:011
	803 KAR 25:012
	803 KAR 25:091
	803 KAR 25:095
	803 KAR 25:096
342.325	806 KAR 12:095
Chapter 350	405 KAR 7:001
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 12:001
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
	405 KAR 24:001
350.010	405 KAR 7:030
350.020	405 KAR 12:020
350.028	405 KAR 7:030
	405 KAR 7:091
	405 KAR 7:092
	405 KAR 12:020
350.050	405 KAR 12:020
350.057	405 KAR 7:030
350.060	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:030
350.070	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:091
	405 KAR 7:092
350.085	405 KAR 1:007
	405 KAR 3:007
	405 KAR 12:020
350.090	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:091
	405 KAR 7:092
350.093	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:091
	405 KAR 7:092

KRS SECTION	REGULATION
350.100	405 KAR 1:007
350.113	405 KAR 12:020
350.130	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:091
	405 KAR 7:092
	405 KAR 12:020
350.135	405 KAR 1:007
	405 KAR 3:007
350.151	405 KAR 3:007
	405 KAR 7:030
	405 KAR 12:020
350.200	405 KAR 1:007
	405 KAR 3:007
350.210	405 KAR 1:007
	405 KAR 3:007
350.220	405 KAR 1:007
	405 KAR 3:007
350.255	405 KAR 7:091
	405 KAR 7:092
350.405-350.455	405 KAR 1:007
	405 KAR 3:007
350.450	405 KAR 3:007
350.455	405 KAR 3:007
350.465	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:030
	405 KAR 7:091
	405 KAR 7:092
	405 KAR 12:020
350.990	405 KAR 7:091
	405 KAR 7:092
	405 KAR 12:020
351.020	805 KAR 5:030
351.105	805 KAR 7:030
352.201	805 KAR 5:030
367.461	40 KAR 2:001
	40 KAR 2:040
	40 KAR 2:050
367.463	40 KAR 2:001
	40 KAR 2:040
	40 KAR 2:050
367.465	40 KAR 2:001
	40 KAR 2:040
	40 KAR 2:050
367.467	40 KAR 2:001
	40 KAR 2:040
	40 KAR 2:050
367.469	40 KAR 2:001
	40 KAR 2:040
	40 KAR 2:050
367.801	40 KAR 2:060
Chapter 368	808 KAR 13:010
Chapter 385	11 KAR 12:090
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:110
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:160
532.100	501 KAR 2:020
	501 KAR 2:030
	501 KAR 2:040
	501 KAR 2:050
	501 KAR 2:060
600.020	905 KAR 1:350
605.090-605.130	905 KAR 1:350
1984 Acts c. 344	600 KAR 1:070
1984 Acts c. 406	600 KAR 1:070
1992 Acts c. 76	302 KAR 34:060
1992 Acts c. 94	603 KAR 5:270
1992 Acts c. 190	11 KAR 12:081
1992 Acts c. 255	500 KAR 10:001
	500 KAR 10:010
	500 KAR 10:020
	500 KAR 10:030
	500 KAR 10:040
1992 Acts c. 267	806 KAR 37:010
1992 Acts c. 304	405 KAR 7:091
	405 KAR 7:092
1992 Acts c. 332	902 KAR 20:320
	902 KAR 20:330
1992 Acts c. 422	905 KAR 8:230
1992 Acts c. 462	401 KAR 50:037
SB 211, 1992 GA	905 KAR 2:100
HB 468, 1992 GA	902 KAR 10:021
	902 KAR 10:121
	902 KAR 10:130
	907 KAR 1:013
7 CFR	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:035
	904 KAR 3:050
7 CFR 657	405 KAR 7:001
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
13 CFR 121.101-.601	600 KAR 4:010
14 CFR 77	602 KAR 50:060
	602 KAR 50:070
14 CFR 91.119	602 KAR 50:010
20 CFR 416	904 KAR 2:015
23 CFR	603 KAR 3:060
23 CFR 658	603 KAR 5:070
	603 KAR 5:270
26 CFR 301.6402	904 KAR 3:050
29 CFR 1910	803 KAR 2:320
30 CFR	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:001
	405 KAR 7:030
	405 KAR 7:091
	405 KAR 7:092
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 12:001
	405 KAR 12:020
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
	405 KAR 24:001
31 CFR 5.23	904 KAR 3:050
34 CFR 682.401	11 KAR 3:005
	11 KAR 4:020
40 CFR	401 KAR 51:052
	401 KAR 59:430
	401 KAR 59:460

KRS SECTION	REGULATION
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750
	401 KAR 59:755
40 CFR 268	401 KAR 37:010
	401 KAR 37:040
40 CFR 270	401 KAR 38:040
40 CFR 280	415 KAR 1:050
	415 KAR 1:060
	415 KAR 1:070
	415 KAR 1:080
	415 KAR 1:090
	415 KAR 1:100
	415 KAR 1:120
40 CFR 383	601 KAR 1:005
	601 KAR 11:040
42 CFR 435	904 KAR 2:035
42 CFR 435.831	904 KAR 2:016
45 CFR	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:035
49 CFR 23	600 KAR 4:010
49 CFR 24	600 KAR 3:010
49 CFR 107	601 KAR 1:025
49 CFR 171-180	601 KAR 1:025
49 CFR 390-397	601 KAR 1:005
49 CFR 391	601 KAR 11:040
56 CFR 41325-31	904 KAR 3:050
57 CFR 39176-77	904 KAR 3:050
20 USC 1078, 1085	11 KAR 3:005
29 UCS 706	781 KAR 1:020
	781 KAR 1:030
	781 KAR 1:060
30 USC	405 KAR 1:007
	405 KAR 3:007
	405 KAR 7:001
	405 KAR 7:030
	405 KAR 7:091
	405 KAR 7:092
	405 KAR 8:001
	405 KAR 10:001
	405 KAR 12:001
	405 KAR 12:020
	405 KAR 16:001
	405 KAR 18:001
	405 KAR 20:001
	405 KAR 24:001
42 USC	401 KAR 51:010
	401 KAR 51:052
	401 KAR 59:175
	401 KAR 59:430
	401 KAR 59:460
	401 KAR 59:635
	401 KAR 59:675
	401 KAR 59:705
	401 KAR 59:725
	401 KAR 59:740
	401 KAR 59:745
	401 KAR 59:750
	401 KAR 59:755
	401 KAR 61:085
42 USC 5401	815 KAR 25:010
42 USC 602	904 KAR 2:016

KRS SECTION	REGULATION
	905 KAR 2:100
42 USC 671	905 KAR 1:350
42 US 7511	401 KAR 63:035
42 USC 8621	904 KAR 2:116
PL 101-624	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:035
PL 102-237	904 KAR 3:010
	904 KAR 3:020

SUBJECT INDEX

ADMINISTRATIVE SERVICES, HUMAN RESOURCES
Vital Statistics
Fees; 901 KAR 5:050

ADULT AND TECHNICAL EDUCATION
Adult Education
GED program; progress qualifications; 780 KAR 9:130

AERONAUTICS
Airport Zoning Commission
Airport zoning map; 602 KAR 50:050
Alteration, construction; permit period; 602 KAR 50:110
Commission jurisdiction; 602 KAR 50:030
Construction within jurisdictional airspace; 602 KAR 50:060
Definitions; 602 KAR 50:010
Hearing procedures; 602 KAR 50:120
Marking or lighting structures; 602 KAR 50:100
Obstructions, standards for determining; 602 KAR 50:070
Permit application procedures; 602 KAR 50:090

AGING SERVICES
(See Social Insurance)

AGRICULTURE
Grain insurance, grain dealers; 302 KAR Chapter 34
Livestock sanitation; 302 KAR Chapter 20

AIR QUALITY
Administrative Procedures
Emissions fee; 401 KAR 50:037
Existing Source Standards
Service stations; 401 KAR 61:085
General Performance Standards
Gasoline dispensing facilities, Stage II; 401 KAR 63:035
Gasoline tank truck leaks; 401 KAR 63:031
New Source Requirements; Nonattainment Areas
Attainment status designations; 401 KAR 51:010
New source review; 401 KAR 51:052
New Source Standards
Graphic arts industry performance standards; 401 KAR 59:635
Industrial-commercial-institutional steam generating unit performance standards; 401 KAR 59:430
Industrial surface coating, plastic parts, business machines performance standards; 401 KAR 59:750
Magnetic tape coating performance standards; 401 KAR 59:745
Polymeric coating, supporting substrates, performance standards; 401 KAR 59:755
Residential wood heater performance standards; 401 KAR 59:675
Service stations; 401 KAR 59:175
Sulfuric acid plant performance standards; 401 KAR 59:460
VOC Emission Performance Standards
Petroleum refinery wastewater system; 401 KAR 59:740
SOCMI air oxidation unit processes; 401 KAR 59:705
SOCMI distillation operation; 401 KAR 59:725

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits, Wine
Containers; 804 KAR 1:130

AUDITOR OF PUBLIC ACCOUNTS
Confidentiality; 45 KAR 1:060

CAPITAL CONSTRUCTION, EQUIPMENT OVERSIGHT
Repealer; 1 KAR 3:006

CAPITAL PLANNING ADVISORY BOARD
Policies, procedures; 1 KAR 6:020

CHIROPRACTIC EXAMINERS
Licensure, registration; 201 KAR 21:095
Recordkeeping, itemized statements; 201 KAR 21:100

CLAIMS, BOARD OF
Board operation, claim procedure; 108 KAR 1:010

COMMUNITY CORRECTIONS GRANT PROGRAM
Administration; 500 KAR 10:020
Annual review for compliance; 500 KAR 10:040
Authority, purpose, name of grant program; 500 KAR 10:010
Community corrections board; 500 KAR 10:030
Definitions; 500 KAR 10:001

CONSUMER PROTECTION
Automated Calling Equipment
Application for permit; 40 KAR 2:030
Issuance of permit; 40 KAR 2:040
Business opportunities; 40 KAR 2:060
Definitions; 40 KAR 2:001
Hearing procedures; 40 KAR 2:050

CORPORAL PUNISHMENT
(See Learning Programs Development, Education)

CORRECTIONS
Class D Felons
Definitions; 501 KAR 2:020
Procedures for housing; 501 KAR 2:060
Purpose; 501 KAR 2:030
Transfer requests; 501 KAR 2:050
Waivers; 501 KAR 2:040
Office of the Secretary
Bell County Forestry Camp; 501 KAR 6:140
Blackburn Correctional Complex; 501 KAR 6:120
Correctional Industries; 501 KAR 6:160
Correctional Institution for Women; 501 KAR 6:070
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Northpoint Training Center; 501 KAR 6:060
Policies and procedures; 501 KAR 6:020
Roederer Correctional Complex; 501 KAR 6:110
Western Kentucky Correctional Complex; 501 KAR 6:130

DISTRICT SUPPORT SERVICES (EDUCATION)
General Administration
Insurance, group health, life; 702 KAR 1:035
School facilities planning, implementation; 702 KAR 1:001
Pupil Transportation
Blind, deaf pupils, reimbursement for; 702 KAR 5:120
Bus drivers' qualifications, responsibilities; 702 KAR 5:080
School District Finance
Maximum class sizes; 702 KAR 3:190
Preschool grant allocations; 702 KAR 3:250
Revenue bond issues restructuring; 702 KAR 3:260
School council allocation formula; 702 KAR 3:245
School Terms, Attendance, Operation
Interscholastic athletics, designation of agent; 702 KAR 7:065

EDUCATION AND HUMANITIES CABINET
Chief State School Officer's Office
Antinepotism certification; 701 KAR 5:075

Records requests procedures; 701 KAR 5:035
School-based decision making complaints; 701 KAR 5:085
District Support Services
General administration; 702 KAR Chapter 1
Pupil transportation; 702 KAR Chapter 5
School district finance; 702 KAR Chapter 3
School terms, attendance, operation; 702 KAR Chapter 7
Learning Programs Development
Education professional standards board; 704 KAR Chapter 20
Elementary, secondary education act; 704 KAR Chapter 10
Learning support services; 704 KAR Chapter 7
Office of instruction; 704 KAR Chapter 3

EDUCATION PROFESSIONAL STANDARDS BOARD
(See Learning Programs Development)

ELECTION FINANCE, REGISTRY OF
General Provisions
Advisory opinions; 32 KAR 2:060
Complaints, internally-generated matters; 32 KAR 2:030
Conciliation; 32 KAR 2:050
Fundraiser registration; 32 KAR 2:070
General provisions; 32 KAR 2:020
Political activities; employees, members; 32 KAR 2:080
Preconciliation procedures; 32 KAR 2:040
Reports and Forms
Reporting requirement exemptions; 32 KAR 1:010E

EMOTIONAL DISABLED CHILDREN, STATE INTERAGENCY COUNCIL FOR SERVICES
Grievance procedure; 202 KAR 1:010

EMPLOYEES, STATE
(See also Personnel)
Personnel Board; 101 KAR Chapter 1
Retirement; 105 KAR Chapter 1
Travel expense, reimbursement; 200 KAR 2:006

EMPLOYMENT SERVICES, HUMAN RESOURCES
Unemployment Insurance
Employer contribution rates; 903 KAR 5:290
Weekly benefit rates, maximum; 903 KAR 5:270

ENVIRONMENTAL PROTECTION
(See Natural Resources, Environmental Protection or individual subject (i.e., Waste Management, Air Quality, etc.)

FINANCE, ADMINISTRATION
State Investment Commission; 200 KAR Chapter 14
State retirement; 105 KAR Chapter 1
Travel expense, reimbursement; 200 KAR Chapter 2

FINANCIAL INSTITUTIONS
Administration
Loan production offices; 808 KAR 1:130
Savings and Loans
Association acquisition; 808 KAR 7:040
Securities
Form U-7, small corporate offering registration; 808 KAR 10:280
Registration exemption if listed on CBOE; 808 KAR 10:270
Thrift Institutions
Check cashing licensees, examination, prohibited advertising; 808 KAR 13:010

FISH AND WILDLIFE RESOURCES
Fish
Angling seasons, limits; 301 KAR 1:200
Boats, outboard motors restrictions; 301 KAR 1:015
Gigging, grabbing, snagging, tickling, noodling; 301 KAR 1:075
Mussel shell harvesting; 301 KAR 1:085
Private waters stocking procedures; 301 KAR 1:160
Snagging; 301 KAR 1:020
Sport, rough fish; 301 KAR 1:060
Waterfowl painting contract; 301 KAR 3:090
Game
Migratory birds seasons; 301 KAR 2:220
Migratory wildlife, taking; 301 KAR 2:044
Wild turkey seasons; 301 KAR 2:140
Wildlife
Ballard WMA restrictions; 301 KAR 4:020

GEOLOGISTS, BOARD OF
Fees; 201 KAR 31:010

GRAIN INSURANCE, GRAIN DEALERS
Forward pricing contracts, maintaining license; 302 KAR 34:060

HAZARDOUS WASTES
(See Waste Management)

HEALTH SERVICES
Communicable Diseases
HIV education, initial professional licensure; 902 KAR 2:150
HIV professional continuing education; 902 KAR 2:160
Medical conditions posing threat to school environment; 902 KAR 2:170
Food and Cosmetics
Hotels, mobile home, recreational vehicle parks; inspection, permit fees; 902 KAR 45:120
Retail food establishments, food manufacturing plants, food storage warehouses, salvage processors, distributors, vending machine companies; permits, fees; 902 KAR 45:110
Health Services, Facilities
Certificate of need process; 902 KAR 20:004
Psychiatric residential treatment facilities; 902 KAR 20:320; 902 KAR 20:330
Radiology
Fee schedule; 902 KAR 100:012
Radiation Operators Certification
General requirements; 902 KAR 105:020
Sanitation
Frozen food locker plant, license fee; 902 KAR 10:021
Inactive status registration; 902 KAR 10:035
On-site sewage disposal; 902 KAR 10:060
Public swimming, bathing facility inspection fee; 902 KAR 10:121
Septic tank servicing licensing fee; 902 KAR 10:130
Tattoo studio sanitary procedures; 902 KAR 10:045

HEARING AID SPECIALISTS
Continuing education requirements; 201 KAR 7:075
Fees; 201 KAR 7:015

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Ineligibility to participate, reasons for; 11 KAR 4:020
Publication distribution; 11 KAR 4:060
Repealer; 11 KAR 4:015
Education Savings Plan Trust
Beneficiary, participant eligibility; 11 KAR 12:030
Beneficiary substitution; 11 KAR 12:050
Benefits payable; 11 KAR 12:070
Definitions; 11 KAR 12:010
Investments, fund transfers; 11 KAR 12:020
Refund cancellation, payment; 11 KAR 12:060
Repealer; 11 KAR 12:081
Residency classification; 11 KAR 12:040

Transfer of ownership; 11 KAR 12:090
Loan Program
Lender participation; 11 KAR 3:005

HIGHWAYS
Maintenance
Advertising devices; 603 KAR 3:060
Traffic
Highway classifications; 603 KAR 5:300
Motor vehicle dimension limits; 603 KAR 5:070
Permit, moving farm equipment; 603 KAR 5:260
Permit, moving overdimensional house trailers; 603 KAR 5:110
Permit, moving steel products, materials; 603 KAR 5:270
Permit, moving utility equipment, poles, pipes; 603 KAR 5:112
Permit, moving wood trusses; 603 KAR 5:105
Overweight, overdimensional permits; 603 KAR 5:075

HOUSING, BUILDINGS AND CONSTRUCTION
Building Code
Kentucky Building Code; 815 KAR 7:025
Hazardous Materials
LP gas license, financial responsibility required; 815 KAR 30:010
Repealer, 815 KAR 30:041
Manufactured Homes, RVs
Certified installers of manufactured homes; 815 KAR 25:030
Manufactured homes; 815 KAR 25:010
Plumbing
Aluminum piping, fittings; 815 KAR 20:077
House sewers, storm water piping installation; 815 KAR 20:130
Joints, connections; 815 KAR 20:100
Materials quality, weight; 815 KAR 20:060
Parts or materials list; 815 KAR 20:020
Plumbing fixtures; 815 KAR 20:070
Polybutylene, installation; 815 KAR 20:075; 815 KAR 20:076
Schedule 40, ABS, PVC plastic pipe, fittings; 815 KAR 20:071
Soil, waste, vent system; 815 KAR 20:090
Steel, wrought iron pipe, installation standards; 815 KAR 20:074
Traps, cleanouts; 815 KAR 20:110
Water supply, distribution; 815 KAR 20:120
Standards of Safety
Fire prevention code; 815 KAR 10:040

HUMAN RESOURCES
Administrative Services
Vital statistics; 901 KAR Chapter 5
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Health Services
Communicable diseases; 902 KAR Chapter 2
Food and cosmetics; 902 KAR Chapter 45
Health services, facilities; 902 KAR Chapter 20
Radiology; 902 KAR Chapter 100
Radiation operators certification; 902 KAR Chapter 105
Sanitation; 902 KAR Chapter 10
Medicaid; 907 KAR Chapter 1
Social Insurance
Food stamp program; 904 KAR Chapter 3
Public assistance; 904 KAR Chapter 2
Social Services
Aging services; 905 KAR Chapter 8
Child welfare; 905 KAR Chapter 1
Day care; 905 KAR Chapter 2

INSTRUCTION
(See Learning Programs Development, Education)

INSURANCE
Administration
Finance examinations of insurers; 806 KAR 2:110
Preservation of records; 806 KAR 2:070
Health Insurance Contracts
Long-term care insurance minimum standards; 806 KAR 17:081
Medicare supplement insurance; 806 KAR 17:066
Holding Company Systems
Insurance holding company systems; 806 KAR 37:010
Trade Practices and Frauds
Property, casualty insurance; unfair claims; 806 KAR 12:095

INVESTMENT COMMISSION
General rules; 200 KAR 14:011
Money market instruments guidelines; 200 KAR 14:091
Repurchase agreement; 200 KAR 14:081

JUSTICE CABINET
Community corrections grant program; 500 KAR Chapter 10
Corrections Department
Class D felons; 501 KAR Chapter 2
Facility standards; 501 KAR Chapter 6
Peace officer death benefits; 500 KAR Chapter 1

KENTUCKY STATE UNIVERSITY
Board of Regents
Procurement procedures; 745 KAR 1:035

LABOR
Occupational safety and health; 803 KAR Chapter 2

LAW, DEPARTMENT OF
Consumer protection; 40 KAR Chapter 2

LEARNING PROGRAMS DEVELOPMENT (EDUCATION)
Education Professional Standards Board
Certificate revocation procedures; 704 KAR 20:585
Preparation-certification program standards; 704 KAR 20:005
Primary school, approval for teaching; 704 KAR 20:660
Professional school position qualifications; 704 KAR 20:165
Substitute teachers; 704 KAR 20:210
Elementary and Secondary Education Act
Courses not in program of studies; approval; 704 KAR 10:050
Learning Support Services
Corporal punishment; 704 KAR 7:056
School council policy rejection, appeal; 704 KAR 7:110
Office of Instruction
Evaluation guidelines; 704 KAR 3:345
Extended school services; 704 KAR 3:390
Superintendent training, assessment; 704 KAR 3:405
Textbook, instructional material adoption; 704 KAR 3:450

LEGISLATIVE RESEARCH COMMISSION
Capital construction/equipment purchase; 1 KAR Chapter 3
Capital Planning Advisory Board; 1 KAR Chapter 6

LIVESTOCK SANITATION
Brucellosis eradication; 302 KAR 20:058

MEDICAID SERVICES
Advanced registered nurse practitioner services; 907 KAR 1:102; 907 KAR 1:104
Home health services payments; 907 KAR 1:031
Hospital inpatient services payments; 907 KAR 1:013
Incorporation by Reference
Alternative intermediate services/mental retardation manual, revised; 907 KAR 1:425
Community mental health; 907 KAR 1:370

Durable medical equipment manual; 907 KAR 1:474
EPSDT; 907 KAR 1:422
Home, community based waiver services manual; 907 KAR 1:432
Home health services manual; 907 KAR 1:430
Hospital services manual; 907 KAR 1:376
Nurse-midwife services manual; 907 KAR 1:408
Pharmacy services manual; 907 KAR 1:416
Podiatry services manual; 907 KAR 1:412
Preventive health services manual; 907 KAR 1:382
Primary care services manual; 907 KAR 1:427
Rural health clinic; 907 KAR 1:418
Targeted case management services adults manual; 907 KAR 1:550
Targeted case management services children's manual; 907 KAR 1:555
Laboratory certification requirements; 907 KAR 1:575
Mental health center services payments; 907 KAR 1:045
Mentally retarded services, payments; 907 KAR 1:025
Nurse aide training criteria, registry; 907 KAR 1:450

MINES AND MINERALS
Miner Training, Education and Certification
Annual retraining program; 805 KAR 7:030
Mining
Unsupported roof, prohibitions, penalties; 805 KAR 5:030

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 50 through 63
Waste management; 401 KAR Chapters 31 through 49
Surface mining reclamation, enforcement; 405 KAR Chapters 1-24

NEPOTISM
Antinepotism certification of superintendents; 701 KAR 5:075

NORTHERN KENTUCKY UNIVERSITY
Annual audit; 760 KAR 1:020
Bond issuance; 760 KAR 1:050
Financial management responsibility delegation; 760 KAR 1:040
Fund acquisition, disbursement; 760 KAR 1:010
Fund for excellence; 760 KAR 1:060
Purchasing, inventory, surplus property sale, bidding; 760 KAR 1:030

NURSING
Nursing task delegation; 201 KAR 20:400

OCCUPATIONAL SAFETY AND HEALTH
General industry standards; 803 KAR 2:015
29 CFR Part 1910.94-.100; 803 KAR 2:306
29 CFR Part 1910.151-.153; 803 KAR 2:310
29 CFR Part 1910.176-.190; 803 KAR 2:313
29 CFR Part 1910.261-.275; 803 KAR 2:317

OCCUPATIONS, PROFESSIONS
Chiropractic examiners; 201 KAR 21:095
Geologists; 201 KAR Chapter 31
Hearing instrument specialists; 201 KAR Chapter 7
Nursing; 201 KAR Chapter 20
Pharmacy; 201 KAR Chapter 2
Physical therapy; 201 KAR 22:070
Respiratory care; 201 KAR Chapter 29
Social work examiners; 201 KAR Chapter 23
Speech-language pathology, audiology; 201 KAR Chapter 17

PEACE OFFICER DEATH BENEFITS
Definitions; 500 KAR 1:010
Death benefit claim filing, processing; 500 KAR 1:020
Hearing request; 500 KAR 1:030

PERSONNEL
Board
Appeal, hearing procedures; 101 KAR 1:365
Employee grievances, complaints; 101 KAR 1:375
Probationary periods; 101 KAR 1:325

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
Claims procedures; 415 KAR 1:080
Definitions; 415 KAR 1:050
Financial responsibility account; 415 KAR 1:060
Hearings; 415 KAR 1:120
Petroleum storage tank account; 415 KAR 1:070
Ranking system; 415 KAR 1:090
Third-party claims; 415 KAR 1:100

PHARMACY
Drug manufacturers, wholesalers; 201 KAR 2:105
Examinations; 201 KAR 2:020
Licenses, permits; fees; 201 KAR 2:050
Nuclear pharmacy services; 201 KAR 2:215
Patient records, counseling; 201 KAR 2:210
Pharmacist-in-charge; 201 KAR 2:205
Pharmacists, impaired; 201 KAR 2:195
Schools approved by the board; 201 KAR 2:010

PHYSICAL THERAPY
Fees; 201 KAR 22:135
Foreign-trained physical therapists; 201 KAR 22:070

PLUMBING
(See Housing, Buildings and Construction)

PUBLIC PROTECTION AND REGULATION
Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR Chapter 1
Financial Institutions
Administration; 808 KAR Chapter 1
Savings and loans; 808 KAR Chapter 7
Securities; 808 KAR Chapter 10
Thrift institutions; 808 KAR Chapter 13
Housing, Buildings and Construction
Hazardous materials; 815 KAR Chapter 30
Kentucky building code; 815 KAR Chapter 7
Manufactured homes, RVs; 815 KAR Chapter 25
Plumbing; 815 KAR Chapter 20
Standards of safety; 815 KAR Chapter 10
Insurance
Administration; 806 KAR Chapter 2
Health insurance contracts; 806 KAR Chapter 17
Holding company systems; 806 KAR Chapter 37
Trade practices, frauds; 806 KAR Chapter 12
Mines and Minerals
Miner training, education, certification; 805 KAR Chapter 7
Mining; 805 KAR Chapter 5
Public Service Commission; 807 KAR Chapter 5
Racing Commission
Harness racing; 811 KAR Chapter 1
Quarter horse, appaloosa, Arabian racing; 811 KAR Chapter 2
Thoroughbred racing; 810 KAR Chapter 1

PUBLIC SERVICE COMMISSION
Rules of procedure; 807 KAR 5:001

RACING COMMISSION
Harness Racing
Licensed personnel, fees; 811 KAR 1:180
Standardbred development fund; 811 KAR 1:215

Quarter horse, Appaloosa, Arabian Racing
Licensing procedures; 811 KAR 2:020
Thoroughbred Racing
Entries, subscriptions, declarations; 810 KAR 1:027
Licensing; 810 KAR 1:025
Medication, testing procedures; 810 KAR 1:018

RECLAMATION, ENFORCEMENT
Bonds, Insurance
Definitions; 405 KAR 10:001
Inspection, Enforcement
Definitions; 405 KAR 12:001
Enforcement; 405 KAR 12:020
Permits
Definitions; 405 KAR 8:001
Provisions, General
Administrative hearings, assessment conferences; 405 KAR 7:092
Applicability; 405 KAR 7:030
Definitions; 405 KAR 7:001
General practice provisions; 405 KAR 7:091
Special Standards
Definitions; 405 KAR 20:001
Strip Mining
Termination, reassertion of jurisdiction; 405 KAR 1:007
Surface Mining Standards
Definitions; 405 KAR 16:001
Underground Mining Standards
Definitions; 405 KAR 18:001
Underground Mining, Surface Effects
Termination, reassertion of jurisdiction; 405 KAR 3:007
Unsuitable Areas
Definitions; 405 KAR 24:001

RESPIRATORY CARE BOARD
Code of ethics, unprofessional conduct; 201 KAR 29:020
Complaint processing procedures; 201 KAR 29:030
Continuing education, inactive status; waiver; 201 KAR 29:060
Continuing education requirements; 201 KAR 29:050
Fees; 201 KAR 29:015
Hearing procedures; 201 KAR 29:040

RETIREMENT
Kentucky Employees Retirement
Actuarial assumptions, tables; 105 KAR 1:040
Administrative hearing; 105 KAR 1:215
Agency participation; 105 KAR 1:120
County attorney employees participation; 105 KAR 1:250
Death before retirement benefits; 105 KAR 1:180
Disability procedures; 105 KAR 1:210
Installment purchase procedures; 105 KAR 1:150
Out-of-state service credit purchase; 105 KAR 1:260
Reciprocal program; 105 KAR 1:020
Sick leave plans; 105 KAR 1:160
Teachers' retirement; 105 KAR Chapter 1

SOCIAL INSURANCE
Aging Services
Adult day care center certification; 905 KAR 8:230
Food Stamp Program
Additional provisions; 904 KAR 3:050
Certification process; 904 KAR 3:035
Definitions; 904 KAR 3:010
Financial requirements; 904 KAR 3:020
Technical requirements; 904 KAR 3:025
Public Assistance
AFDC, standards for need, amount; 904 KAR 2:016
AFDC, technical requirements; 904 KAR 2:006
Aged, blind, disabled supplemental programs; 904 KAR 2:015
LIHEAP; 904 KAR 2:116
Right to apply and reapply; 904 KAR 2:035

SOCIAL SERVICES
Child Welfare
Family preparation section; 905 KAR 1:350
Day Care
Family child-care home certification; 905 KAR 2:100

SOCIAL WORK EXAMINERS
Examination, fee; 201 KAR 23:020

SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY
Continuing education requirements; 201 KAR 17:090
Continuing education, inactive status, waiver; 201 KAR 17:091

STATE DEPARTMENT
Registry of Election Finance
General provisions; 32 KAR Chapter 2
Reports, forms; 32 KAR Chapter 1

STATE EMPLOYEES
(See Employees, State or Personnel)

SURFACE MINING RECLAMATION, ENFORCEMENT
(See Reclamation, Enforcement)

TATTOO STUDIOS
(See Health Services)

TEACHERS' RETIREMENT
Reciprocal program; 102 KAR 1:185

TOLL FACILITIES
Turnpike toll assessment; 600 KAR 2:010

TOURISM
Fish and Wildlife Resources
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2

TRANSPORTATION
Administration
Minority Affairs Office
Business enterprise certification; 600 KAR 4:010
Business enterprise program; 600 KAR 4:020
Motor pool procedure; 600 KAR 1:070
Toll facilities; 600 KAR Chapter 2
Aeronautics
Airport Zoning Commission; 602 KAR Chapter 50
Highways
Maintenance; 603 KAR Chapter 3
Traffic; 603 KAR Chapter 5
Property Acquisition and Uniform Relocation
Relocation assistance payments; 600 KAR 3:010
Vehicle Regulation
Commercial driver's license; 601 KAR Chapter 11
Motor carriers; 601 KAR Chapter 1
Motor vehicle tax; 601 KAR Chapter 9
Transportation of solid waste; 601 KAR Chapter 40

TRAVEL EXPENSE, REIMBURSEMENT, STATE EMPLOYEES
Reimbursement for travel; 200 KAR 2:006

VEHICLE REGULATION
Commercial Driver's License
Medical waivers, intrastate operators; 601 KAR 11:040
Motor Carriers

Overweight, overdimensional; 601 KAR 1:015; 601 KAR 1:016
Safety regulations; 601 KAR 1:005
Transportating hazardous materials; 601 KAR 1:025
Motor Vehicle Tax
Motor vehicle registration; 601 KAR 9:130
Transportation Solid Waste
License application; 601 KAR 40:020

VOCATIONAL REHABILITATION
Administration
General provisions of department operation; 781 KAR 1:020
Selection, economic need test; 781 KAR 1:030
Voc rehab; selection, economic need test; 781 KAR 1:030
Work training centers, community facilities; 781 KAR 1:060

WASTE MANAGEMENT
Hazardous Waste; Identification, Listing
General provisions; 401 KAR 31:010
Hazardous wastes lists; 401 KAR 31:040
Rule-making petitions; 401 KAR 31:060
Hazardous waste constituents appendix; 401 KAR 31:170
Hazardous Waste Permitting Process
General provisions; 401 KAR 38:010
Interim status provisions; 401 KAR 38:020
Permit changes, expiration; 401 KAR 38:040
Public information procedure; 401 KAR 38:050
Special types of permits; 401 KAR 38:060
Land Disposal Restrictions
General provisions; 401 KAR 37:010
Prohibitions; 401 KAR 37:030
Storage prohibitions; 401 KAR 37:050
Treatment standards; 401 KAR 37:040
Owners, Operators; Hazardous Waste Facilities
Closure, postclosure; 401 KAR 34:070
General facility standards; 401 KAR 34:020
Groundwater protection; 401 KAR 34:060
Manifest system, recordkeeping, reporting; 401 KAR 34:050
Tanks; 401 KAR 34:190
Owners, Operators; Hazardous Waste Facilities; Interim Status
Closure, postclosure; 401 KAR 35:070
General facilities standards; 401 KAR 35:020
Manifest system, recordkeeping, reporting; 401 KAR 35:050
Tanks; 401 KAR 35:190
Solid Waste Planning
Assistance program; 401 KAR 49:040
General provisions; 401 KAR 49:011
Solid waste grant program; 401 KAR 49:009E
Waste tire trust fund grant program; 401 KAR 49:230
Waste tire trust fund loan program; 401 KAR 49:220
Specific Hazardous Waste, Management Standards
Recyclablel materials; 401 KAR 36:030

WORKERS' COMPENSATION BOARD
Workers' Claims
Claims adjustments procedure; 803 KAR 25:011
Hospital fee schedule; 803 KAR 25:091
Medical fee disputes resolution; 803 KAR 25:012
Medical services statements; 803 KAR 25:095
Physicians selection, treatment plans; 803 KAR 25:096

WORKFORCE DEVELOPMENT CABINET
Adult and Technical Education
Adult education; 780 KAR Chapter 9
Vocational Rehabilitation
Administration; 781 KAR Chapter 1