ADMINISTRATIVE REGISTER OF KENTUCKY

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

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

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ADMINISTRATIVE REGULATION REVIEW 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
13 KAR 2:060E

The Council on Higher Education has statutory responsibility for the approval of new degree programs at the state universities and community colleges. KRS 164.020(8) was amended in the 1992 General Assembly to require that the institutions meet their equal opportunity goals before any new degree programs can be approved. This regulation sets out specifically the standards to be met by the institutions. The council has established two (2) meeting dates per year - in January and July - for the consideration of degree programs. In order to stay on schedule, it is necessary to proceed with an emergency regulation at the same time as the ordinary regulation is filed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December 7, 1992.

BRERETON C. JONES, Governor
JOE BILL CAMPBELL, Chairperson

COUNCIL ON HIGHER EDUCATION

13 KAR 2:060E. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.020(8)
STATUTORY AUTHORITY: KRS 164.020(8)
EFFECTIVE: December 10, 1992
NECESSITY AND FUNCTION: The Council on Higher Education approves the offering of all degree programs at the state-supported institutions of higher education. Unless a temporary waiver is granted by the Council on Higher Education, approval of any new degree program is contingent upon an institution's having met its equal opportunities goals. As required by KRS 164.020(8), this administrative regulation sets forth the terms for determining compliance with an institution's equal opportunity goals and for the granting of temporary waivers to the state-supported institutions of higher education which have not met their goals.

Section 1. Institutional Objectives. (1) The objective for the enrollment of African-American students at a state-supported institution of higher education shall be equal to the percentage of African-American high school graduates within the institution's market area. The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at the state-supported institution of higher education during the fall semester, 1990.

(2) Each institution's objective for the retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's 1987 retention rate for first-year undergraduate Kentucky resident white students.

(3) Each institution's objective for the retention of all undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's 1987 retention rate for all Kentucky resident white undergraduate students.

(4) Each institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be calculated by multiplying the institution's enrollment objective by the institution's retention objective for all undergraduates. However, the objective for Kentucky State University shall be to maintain the level achieved in the 1986-87 school year.

(5) Each institution's objective for the enrollment of Kentucky resident African-American graduate students shall be equal to the institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students. However, Kentucky State University and the community colleges shall be exempt from this objective.

(6) Each institution's objective for the employment of African-Americans in executive, administrative, and managerial positions shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(7) Each institution's objective for the employment of African-American faculty shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(8) Each institution's objective for the employment of African-Americans in the category of professional nonfaculty not within subsections (6) and (7) of this section shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

Section 2. Annual Progress. (1) Incremental progress toward achievement of all objectives by school year 1994-95 shall be measured annually. Data from 1987 shall be used as a baseline for measurement.

(2) For each objective, annual progress shall be calculated using one (1) of the following two (2) methods:

(a) When the level of achievement for a particular objective exceeds that of the 1987 baseline, the following equation shall be applied: 100, multiplied by the difference between the percentage attained in the year being measured and the percentage attained in 1987, divided by the difference between the percentage expected by 1994-95 and the percentage attained in 1987.

(b) When the level of achievement for a particular objective falls below that of the 1987 baseline, the following equation shall be applied: 100, multiplied by the difference between the percentage attained in the year being measured divided by the percentage attained in 1987 and one (1).

Section 3. Average Annual Progress. An overall level of annual achievement for an institution shall be established by calculating a simple average of annual progress toward all of the objectives.

Section 4. Automatic Eligibility. (1) Automatic eligibility for the consideration of new degree programs shall exist when:

(a) An institution exhibits progress in six (6) of the eight (8) objectives except for Kentucky State University which shall exhibit progress in five (5) of the seven (7) objectives and except for community colleges which shall exhibit progress in three (3) of the four (4) objectives; and

(b) Average annual progress meets or exceeds forty (40) percent for fiscal year 1991-92; sixty (60) percent for fiscal year 1992-93; eighty (80) percent for fiscal year 1993-94; and, 100 percent for fiscal year 1994-95.

(2) Qualifying for automatic eligibility based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(3) Qualifying for automatic eligibility based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(4) Qualifying for automatic eligibility based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(5) Qualifying for automatic eligibility based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

Section 5. Waivers. (1) If an institution is not automatically eligible under Section 4 of this administrative regulation and intends to submit degree programs to the Council on Higher Education for approval, the institution may request a one (1) year waiver.

(2) A waiver request shall include a resolution submitted to the Council on Higher Education by the institution's governing board and shall be based upon either a quantitative or qualitative assessment of the institution's efforts.

(a) Quantitative basis. A waiver may be granted based upon:

1. Progress in five (5) of the eight (8) objectives except for Kentucky State University which shall exhibit progress in four (4) of the seven (7) objectives, and except for the community colleges which shall exhibit progress in two (2) of the four (4) objectives; and

2. Average annual progress which meets or exceeds thirty (30) percent for fiscal year 1991-92; forty-five (45) percent for fiscal year 1992-93; sixty (60) percent for fiscal year 1993-94; and eighty (80) percent for fiscal year 1994-95.

(b) Qualitative basis.

1. A waiver may be granted based upon the submission of information in support of outstanding efforts that were attempted which have not yet proven to be successful or extraordinary circumstances that precluded success.

2. The submission shall indicate how the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.

3. The submission shall also include specific and quantifiable aspects of the institution's efforts to meet the equal opportunity objectives.

4. Student-related data or plans may include:

a. Commitment of funds to equal opportunity related activities;

b. Financial aid distribution;

c. Student services activities;

d. High school visitations and results; and

e. Academic support services.

5. Employee-related data or plans may include:

a. Number of interviews;

b. Offers made that are accepted or rejected;

c. Utilization of funds to stimulate units to improve their employment data;

d. Special actions for units within the institutions where additional efforts are required; and

e. An evaluation of long-range data trends for those objectives that fell below expectations.

(3) Receiving a waiver based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(4) Receiving a waiver based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(5) Receiving a waiver based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(6) Receiving a waiver based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

(7) A waiver shall not be granted in consecutive years.

JOE B. CAMPBELL, Chairperson
APPROVED BY AGENCY: December 3, 1992
FILED WITH LRC: December 10, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapter 196, the department needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected policy must be added immediately as the department must establish a uniform system for compensating inmates for work performed; and to provide for a manageable budgetary system, in regard to inmate pay, for those responsible for administering such programs. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on November 17, 1992 in accordance with KRS Chapter 13A.

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

JUSTICE CABINET
Department of Corrections

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

RELATES TO: KRS Chapters 196, 197, 439

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

EFFECTIVE: December 2, 1992

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised November 17 [~~July 27~~], 1992, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky 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.

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1.2	News Media
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1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures [(~~Amended 7/17/92~~)]
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	Code of Ethics
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law

7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
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9.18	Informants
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10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary [~~(Amended 7/17/92)~~]
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services
14.2	Personal Hygiene Items [~~(Amended 7/17/92)~~]
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures [~~(Amended 7/17/92)~~]
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties [~~(Amended 7/17/92)~~]
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16.2	Inmate Correspondence
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16.4	Inmate Packages
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17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
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18.7	Transfers
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
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18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
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20-01-01	Educational Programs
22.1	Privilege Trips [~~(Amended 7/17/92)~~]
25.1	Gratuities [~~(Amended 7/17/92)~~]
25.2	Public Official Notification of Release of an Inmate
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25.7	Expedient Release
25.8	Extended Furloughs
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27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)

28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/ Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 17, 1992
FILED WITH LRC: December 2, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
702 KAR 1:001E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary in order to complete facility plans for approximately 17 school districts implementing changes due to the passage of House Bill 940. These facility plans must be completed by June 30, 1993, and will be the basis of need for School Facility Construction Commission funding in 1994. Also included are the formulas for calculating the needs statement which is to be completed by October 15, 1993, in accord with KRS 157.620. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 1:001E. Implementation guidelines - Kentucky school facilities planning manual.

RELATES TO: KRS 157.420, 157.620, 157.622
STATUTORY AUTHORITY: KRS 156.070, 157.420
EFFECTIVE: December 10, 1992
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: December 10, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
702 KAR 3:245E

This emergency administrative regulation, as approved by the State Board for Elementary and Secondary Education, creates an allocation formula for school councils pursuant to KRS 160.345(8). In order for school councils to be trained and for school districts to begin calculations, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 3:245E. School council allocation formula.

RELATES TO: KRS 160.345
STATUTORY AUTHORITY: KRS 156.070, 160.345
EFFECTIVE: December 10, 1992
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: December 10, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:575E

This emergency administrative regulation is being implemented to comply with the Clinical Laboratory Improvement Amendments (CLIA) of 1988 which require state Medicaid Programs to limit reimbursement for laboratory services to only those laboratories issued CLIA certificates. This action is effective December 1, 1992. This action must be taken on an emergency basis to comply with the federal requirement in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about November 15, 1992.

BRERETON JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:575E. Compliance with laboratory certification requirements.

RELATES TO: KRS 205.520, 42 CFR Part 493, 42 USC 1396a-d
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: December 8, 1992
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: December 8, 1992 at 9 a.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

LEGISLATIVE RESEARCH COMMISSION
Capital Planning Advisory Board
(As Amended)

1 KAR 6:020. Policies and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:020. General provisions.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: The Registry of Election Finance is charged with the responsibility of enforcing campaign finance laws contained in KRS Chapters 121 and 121A. **The function of this administrative regulation is to establish procedures for processing possible violations of campaign finance statutes and administrative regulations promulgated by the Registry of Election Finance.** The purpose of this administrative regulation is to establish general provisions which shall apply throughout this chapter governing practice and procedure.

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

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

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

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

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

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

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

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

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

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

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

Section 3. [4.] Initiation of Enforcement Matters. Enforcement matters may be initiated by a written complaint or on the basis of information ascertained by the registry in the normal course of conducting its enforcement duties.

Section 4. [5.] Ex Parte Communications. (1) In order to avoid the possibility of prejudice, real or apparent, in derogation of the public interest in enforcement actions pending before the registry, except to the extent required during an investigation or conciliation negotiations, [no] interested persons outside the agency shall not make or cause to be made to any registry member or employee any ex parte communication relative to the factual or legal merits of an [any] enforcement action, nor shall a [any] registry member or employee make or entertain [such] ex parte communications.

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

(3) [Nothing in] This section shall not be construed to prohibit contact between a respondent or respondent's attorney and a [any] registry employee in the performance of his duties. [No] Statements made by a registry employee during these [such] communications shall not bind or estop the registry in any way.

Section 5. [6.] Representation by Counsel; Notification. (1) If a respondent wishes to be represented by counsel with regard to any matter pending before the registry, respondent shall so advise the registry by sending a letter of representation signed by the respondent, which shall contain the name, address, and telephone number of the counsel and a statement authorizing the [such] counsel to receive all notifications and other communications from the registry on behalf of the respondent.

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

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

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

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

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

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

(2) A complaint alleging a violation shall be filed within time prescribed by KRS 500.050 [four (4) years after the alleged violation occurs]. If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice has ceased, or the date on which the complaint is filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) **No later than four (4) days preceding each primary and general election, the registry shall publish the names of all candidates appearing on the ballot who have failed to timely file any report required by KRS 121.180(3)(a) for any reporting period since the date of the last election.** [~~Prior to taking action against any person who has failed to file a disclosure report required by KRS 121.180(3)(a) for the calendar quarter immediately preceding the election involved or by KRS 61.740, the registry shall notify such person of failure to file the required reports. If a satisfactory response is not received within four (4) business days, the registry shall publish before the election the name of the person and the report or reports such person has failed to file.~~]

Section 6. Reopening of Proceedings. After a hearing and the issuance of a final order **as provided in Acts 1992, Chapter 288, Section 46**, the registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all parties and intervenors, and may take the action it deems necessary.

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

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

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

Section **8.** [~~9.~~] 32 KAR 2:010, Processing complaints; hearings, is hereby repealed.

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

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:040. Preconciliation procedures.

RELATES TO: KRS 121.120, 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a procedure for processing complaints or internally-generated matters prior to the conciliation process established by **Acts 1992, Chapter 288, Section 46** [~~Senate Bill 221~~] enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.

Section 1. Reason to Believe Finding. (1) If the general counsel, either after reviewing a complaint and **a respondent's letter or memorandum requesting that the registry take no action on the complaint as provided in** [~~any response of a respondent submitted pursuant to~~] Section 3 of 32 KAR 2:030, or after reviewing an internally-generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.

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

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

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

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

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

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

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

Section 5. Service of Subpoenas, Orders, and Notifications. (1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the

manner prescribed by this section. In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.

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

(3)**(a) Delivery of subpoenas, orders, and notifications to a natural person may be made by:**

1. Handing a copy to the person;

2. Leaving a copy at his dwelling place or usual place of abode with a person of suitable age and discretion residing therein;

3. Mailing a copy by registered or certified mail to his last known address; or

4. Any other method whereby actual notice is given.

(b) When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by:

1. Mailing a copy by registered or certified mail to the person at its place of business;

2. Handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of the person;

3. Mailing a copy by registered or certified mail to the representative at his last known address; or

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

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

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

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

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

Section 8. Briefing Procedures. (1)**(a)** Upon completion of the investigation, the general counsel shall make a report of the findings of the registry.

(b) If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case.

(c) The registry may also request the respondent to appear to present additional information, or the respondent may request that he be allowed to present additional evidence.

(d) The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

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

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

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

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

(2) A conciliation agreement **pertaining to a violation of KRS 121.180** **[**~~reached pursuant to this section~~**]** shall not be binding upon either party until it is signed by the respondent, the general counsel and the executive director, and approved by the registry.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: September 17, 1992
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DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:050. Conciliation.

RELATES TO: KRS 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with **Acts 1992, Chapter 288, Section 46** **[**~~Senate Bill 221~~**]**, which became effective July 14, 1992.

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

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

(3) If the probable cause to believe finding is made within forty-

five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

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

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

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

(3) Except as provided in subsections (1) and (2) of this section, **a** [~~no~~] complaint filed with the registry, [~~nor~~] any notification sent by the registry, [~~nor~~] any investigation conducted by the registry, **or** [~~nor~~] any findings made by the registry shall **not** be made public by the registry or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(4) Except as provided in subsections (1) and (2) of this section, **an** [~~no~~] action by the registry or by any person, and [~~no~~] information derived in connection with conciliation efforts **shall not** [~~may~~] be made public by the registry until a final action with regard to a conciliation attempt is taken.

(5) [~~Nothing in~~] This administrative regulation shall **not** be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.

JOSEPH H. TERRY, Chairman.
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DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:060. Advisory opinions.

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

Section 1. Requests for Advisory Opinions. (1) **A** [~~Any~~] person may request in writing an advisory opinion concerning the application of campaign finance statutes or administrative regulations with regard to a particular transaction. An authorized agent of the person requesting an advisory opinion may submit the advisory opinion request, but the agent shall disclose the identity of his principal.

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

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

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

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

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

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

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

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

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

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

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

Section 4. Issuance of Advisory Opinions. **Advisory opinions shall be issued by the registry as provided in KRS 121.135(2).** [~~(1) Within thirty (30) calendar days after receiving an advisory opinion request that qualifies as a valid request under Section 1 of this administrative regulation, the Office of General Counsel shall issue to the requesting party a written advisory opinion.~~

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

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

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

JOSEPH H. TERRY, Chairman

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DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:070. Fundraiser registration.

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

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

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

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

(3) For purposes of this administrative regulation, the following activities shall not qualify a person as a fundraiser:

(a) Serving as treasurer of a campaign committee;

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

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

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

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

JOSEPH H. TERRY, Chairman
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DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

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

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

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

JOSEPH H. TERRY, Chairman
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TEACHERS' RETIREMENT SYSTEM
(As Amended)

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

RELATES TO: KRS 6.525, 21.427, 61.552, 61.680, 161.600, 161.608
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 61.552, 61.680, 161.600, ~~[and]~~ 161.608, 6.525, and 21.427 set forth ~~[out]~~ a broad program of reciprocity among the ~~[various]~~ retirement systems administered under provisions of KRS Chapters 61, ~~[and]~~ 161, 6, and 21. This **administrative** regulation defines the benefits to be provided and the administrative procedures to be followed in arriving at the appropriate payments to be made to eligible persons.

Section 1. Upon death, disability, or service retirement, the following procedure shall be applicable to a member having an account in more than one (1) retirement system:

(1) Combine the member's service in all systems;

(2) Determine eligibility in each system based on combined service;

(3) If eligible in any system, determine benefits; **and**

(4) Check for specific exceptions such as prior service, request for separate account or special death or disability exception.

Section 2. (1) A member eligible to retire who elects service

retirement from one (1) system, shall be paid from all systems in which he has an account unless he requests that his accounts be separated.

(2) The "final average salary" shall [~~will~~] be calculated by using the five (5) highest annual salaries regardless of the system under which the service was covered. Calculations shall [~~will~~] be based on the procedures in use by each system concerned.

(3) Each system shall [~~will~~] determine benefit payments on the basis of the final average salary and service credited in that system. Payments shall [~~will~~] be made by each system in accordance with established procedures. Where the normal age requirement has not been met, benefits shall be actuarially reduced.

(4) The member shall [~~will~~] not be required to elect the same retirement option in both systems. Each annuity option shall [~~will~~] apply only to the system for which it is elected.

(5) A member may elect to have each system treat his service credit in that system without regard to any other service credit, by requesting that his accounts be separated. In this case, "final average salary" shall [~~would~~] be based on the salaries earned under each system separately.

[~~(6) The minimum annuity of seventy-five (75) dollars per month provided in KRS 161.620 shall not apply to persons retiring with less than five (5) years service in the Teachers' Retirement System.~~]

Section 3. (1) If a member qualifies for disability benefits based on service in the system in which he is currently a contributing member, he shall [~~will~~] receive disability benefits from that system based on the formula used by that system and **the** other system(s) shall [~~will~~] pay:

(a) Benefits based on separate accounts should the member elect to maintain separate accounts; or

(b) An actuarial accrued benefit based on the member's age, service, and final compensation, if eligible for this benefit; or

(c) A refund if requested by the member.

(2)**(a)** If the combined service in two (2) or more systems is used to qualify a member for benefits, all systems under which the combined service would meet service requirements shall participate in benefit payments.

(b) Each system shall calculate benefits using the formula in effect in that system.

(c) The Teachers' Retirement System shall pay benefits during the eligibility period in proportion to the service in the Teachers' Retirement System as it relates to total combined service.

(d) After the expiration of the eligibility period, the benefit would be recalculated on the basis of Teachers' Retirement System service without discount.

(3) If the combined service of a member meets service requirements in only one (1) system, that system shall only pay benefits under their disability formula and the other system shall pay benefits under subsection (1)(a) to (c) of this section.

(4) The medical requirements for disability benefits shall [~~will~~] be those of the system to which the member is currently contributing, if combined service meets service requirements of that system. If service requirements are met in only one (1) system, the medical requirements of that system shall [~~will~~] prevail [~~regardless of current employment in another system~~].

Section 4. (1) An active member with Teachers' Retirement System service who has not qualified for Teachers' Retirement System service retirement at the time of death shall have death and survivor benefit coverage as follows:

(a) A Teachers' Retirement System member currently employed in a position covered by the Teachers' Retirement System shall [~~would~~] have full coverage for benefits provided by KRS 161.520 and KRS 161.655 without regard to service in any other system;

(b) A Teachers' Retirement System member currently employed in a position covered by the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System would qualify for coverage in proportion to the service in the Teachers' Retirement System as it relates to total combined service;

(c) Service in any of the [~~four (4)~~] state retirement systems affected by this **administrative** regulation shall [~~would~~] qualify as continued coverage under the Teachers' Retirement System if the member was covered at the termination of employment under the Teachers' Retirement System and did not withdraw his account with the Teachers' Retirement System. This coverage shall [~~would~~] continue until the time the member became eligible for death or survivor benefits in the system under which he is currently employed.

(2) An active member with Teachers' Retirement System service who has qualified for service retirement at time of death shall [~~would~~] have coverage for death and survivors benefits as follows:

(a) If the member had sufficient Teachers' Retirement System service to qualify for retirement on that service only, full benefits shall [~~would~~] be payable to qualified survivors as provided in KRS 161.520, 161.525 and 161.655. The annuity portion shall [~~would~~] be calculated as provided in KRS 21.420 and 61.680 and actuarially adjusted for age and sex of the eligible survivor.

(b) If the member qualified for retirement only on the basis of combined service, the benefits under KRS 161.520 and 161.655 shall [~~would~~] be paid in the same proportion as the Teachers' Retirement System service was to total combined service. The annuity portion shall [~~would~~] be calculated as provided in subsection (2)(a) of this section.

Section 5. A former member of the Teachers' Retirement System who has withdrawn his account and last service credit may reinstate his account and service credit with the Teachers' Retirement System if:

(1) The member is a contributing member of the County Employees Retirement System, the Kentucky Employees Retirement System, [~~or~~] the State Police Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement System with at least one (1) year of contributing service; and

(2) If Prior Service is involved, the member shall have one (1) or more years contributing service in the Teachers' Retirement System subsequent to July 1, 1941.

Section 6. A member having valid service credit in more than one (1) of the state retirement systems may elect to purchase retirement credit for active duty time in one (1) system or he may divide the service credit between two (2) systems. If service is to be divided the following additional requirements shall all be met:

(1) The total military service credit in all systems **shall [**~~may~~**]** not exceed six (6) years.

(2) The same years active duty **shall [**~~may~~**]** not be used in more than one (1) system;

(3) Each system **shall [**~~will~~**]** calculate the costs of military retirement credit in accordance with the statutes and **administrative** regulations of that system.

Section 7. (1) A Teachers' Retirement System member who has service credit in the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, or Judicial Retirement System shall have his total service in these retirement systems combined to determine eligibility for participation in the medical insurance program established by KRS 161.675.

(2) If a member is eligible for medical insurance benefits under KRS 161.675, the member may elect an insurance plan offered by any of the participating retirement systems in which the member has service credit.

(3) The cost of the member's medical insurance premium shall be prorated between the participating retirement systems based upon the

member's service credit in each respective retirement system.

(4) The Teachers' Retirement System shall not pay a premium which exceeds the amount which the member is eligible to receive based upon the premium schedule in effect for each respective period of coverage.

(5) Spouses and eligible dependents may elect coverage if the member elects medical insurance coverage under the Teachers' Retirement System plan, but the retirement system shall not provide premium costs for spouses and eligible dependents if the member elects medical insurance coverage under the plan offered by any of the other participating retirement systems.

(6) Participation in the Teachers' Retirement System plan shall be limited to the period of coverage offered at the time of retirement or offered during subsequent periods of open enrollment.

(7) Reconciliation of prorated premium payments for medical insurance coverage between participating retirement systems shall be made not less than once during each fiscal year.

(8) The reciprocal provisions relating to medical insurance shall be retroactive to July 1, 1990. [~~Teachers' Retirement System members qualifying for retirement on combined service, but having less than five (5) years service in Teachers' Retirement System shall not be included for coverage under the Hospital Medical Insurance Program.~~]

VIRGINIA MURRELL, Chairperson
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: October 14, 1992 at 8 a.m.

BOARD OF CLAIMS
(As Amended)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) If the response filed by the affected agency denies negligence in a claim whose value is $1,000 or greater, the secretary shall set a hearing before a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the time and place of the hearing.

Section 3. Hearings. (1) Hearings shall be open to the public. The proceedings of hearings shall be taken by a stenographer. The hearing officer shall cause the hearing to be conducted with decorum.

(2) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction in this Commonwealth.

(3) All testimony and proof shall be presented at the hearing before the hearing officer by all parties; however, the board, on oral motion at the hearing or on written motion thereafter, shall permit further proof during thirty (30) days following the hearing.

(4) Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.

(5) If the claimant fails to appear at a scheduled hearing of which he has notice and fails to file with the board [~~show good cause~~] within five (5) days following the hearing a written statement that the board determines indicates good cause for his failure to appear, the board may order the claim dismissed. If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(6) After completion of proof and submission of the case for decision, the claimant shall have thirty (30) days to submit its brief; the defendant thirty (30) days thereafter and the claimant five (5) days for rebuttal. If the parties do not desire to submit briefs or should the board not desire that briefs be submitted, this fact should be made known at the hearing.

(7) The hearing officer shall furnish recommended [a] findings of fact, conclusions of law and order to the board [~~, with copies to the claimant or his legal representative and the attorney for the defendant,~~] within thirty (30) days after the record is completed. [~~The claimant or his legal representative and the attorney for the defendant shall then have ten (10) days from the date of receipt of the recommended findings of fact, conclusions of law and order to file exceptions with the board. Failure to file exceptions on time shall constitute a waiver of the privilege to file exceptions.~~]

Section 4. Board Decision. (1) Each claim shall be submitted to the board at an early meeting following the submission of the hearing

officer's recommended findings of fact, conclusions of law and order ~~[and the exceptions, if any filed by the claimant or his legal representative and the attorney for the defendant]~~ ~~[report]~~.

(2) The board, or a majority of its members, shall render a decision on each claim at a board meeting.

(3) Regardless of the amount of any claim the matter shall be deemed finally adjudicated if the claim has been the subject of full board review.

~~[(4) No testimony, oral argument, or other appearance by parties or counsel shall be permitted before the board unless the board for good cause expressly requests such testimony, oral argument, or appearance.]~~

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board. Any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that party shall be responsible for all costs necessary to establishing the fact. The parties are encouraged to stipulate the facts whenever possible.

JACK D. RAZOR, Chairman
APPROVED BY AGENCY: October 2, 1992
FILED WITH LRC: October 5, 1992 at 2 p.m.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(As Amended)

201 KAR 21:100. Minimum standards for recordkeeping/ itemized statements.

RELATES TO: KRS 312.019(9)(j)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019
NECESSITY AND FUNCTION: KRS 312.019(9)(j) authorizes the board to adopt administrative regulations to establish minimum standards for recordkeeping and issuance of itemized statements. This administrative regulation establishes these standards.

Section 1. Office Visits - Recordkeeping. (1) The patient's records shall include the history, exams, re-exams, diagnosis, update diagnosis, and standing orders or plan of care (updated as needed or at re-exam); and this information shall be legibly recorded in the patient's record.

(2) Legible documentation, whether electronically generated, computer generated, typewritten or hand written, shall record each visit, and shall include the following:

(a) Date of the visit;
(b) Patient symptoms, comment and interval history, if any;
(c) Procedures performed, if any;
(d) Additional pertinent comments, instructions, or orders; and
(e) The doctor's **name** ~~[initials or other designation in a multi-doctor facility]~~.

Section 2. Itemized Statements. Requests for itemized statements, including dates, services and fees, shall be honored within three (3) business days.

DR. HAROLD BYERS, President
APPROVED BY AGENCY: October 6, 1992
FILED WITH LRC: October 8, 1992 at 3 p.m.

TRANSPORTATION CABINET
Office of Minority Affairs
(As Amended)

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

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, **15 USC 637**
STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23
NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified **and prequalified** DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.

(13) "Prequalified" means that the Transportation Cabinet has approved the business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A or 603 KAR 2:015.

(14) [~~(13)~~] "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet **shall have** [~~has~~] a rebuttable presumption that individuals listed in **paragraphs (a) through (f) of this subsection** [~~the groups below~~] are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) [~~(14)~~] "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. 49 CFR 23 effective June 1, 1992 [~~May 23, 1988~~] is adopted without change. This **federal** regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3 [~~on forms prescribed and furnished by the Transportation Cabinet~~]. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall identify his position with the business enterprise applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an on-site inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

(6) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. Its telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1)**(a)** The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall perform a commercially useful function as set forth in 49 CFR Part 23.47.

(2) The Office of Minority Affairs shall issue a **written** determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE or WBE is approved by the Transportation Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 of this administra-

tive regulation is not received during the time the Office of Minority Affairs is evaluating the application, the **written** notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE or WBE.

(2) Certification as a DBE, MBE or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration a certified DBE, MBE or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and require the same information as in Section 3 of this administrative regulation except that beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date of the notice if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current **[**~~8(a)~~**]** certification from the Small Business Administration **issued pursuant to United States Code Title 15 Section 637**, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This terminates the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed

determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 8 and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a **written** decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing. The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE or WBE program. Application for certification shall be on **Transportation Cabinet Form TC 10-5 which is incorporated by reference as a part of this administrative regulation** [~~forms prescribed and furnished by the Transportation Cabinet~~]. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet.

(3) If all firms involved in the joint venture are certified DBEs, MBEs or WBEs, there **shall not be a** [~~is no~~] need for the joint venture to request certification.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. Its telephone number is (502) 564-3601.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective September 9, 1992 [~~July 2, 1990~~], is adopted without change. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than $15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), **one (1) week** management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky but which are within a seventy-five (75) mile proximity may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of

charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) **The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm.** ~~[The Transportation Cabinet shall provide an orientation program for all newly certified DBE firms.]~~ The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under 600 KAR 1:100 or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

MAURICE SWEENEY, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: September 22, 1992
FILED WITH LRC: October 8, 1992 at 9 a.m.

TRANSPORTATION CABINET
Office of Minority Affairs
(As Amended)

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

RELATES TO: KRS Chapters 96A, 174, 176, 177 183
STATUTORY AUTHORITY: KRS 13A.120, 174.080, **49 CFR Part 23**

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

(9) "Apparent successful competitor" means the bidder submitting the lowest and best bid in accordance with KRS 176.080 or Chapter 45A.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE or WBE subcontractors who are certified in accordance with 600 KAR 4:010.

(3) Any contractor who bids on and is the apparent successful competitor for ~~[such]~~ a project with established DBE participation goals shall be responsible for meeting the goals for participation of certified DBE, MBE or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE or WBE subcontractor participation information **as specified in Sections 3(1) and 6 of this administrative regulation**.

Section 3. Prime Contractor Guidelines. (1)(a) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE or WBE subcontractors, he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways.

(b) The agreement shall be signed and notarized by both parties to the agreement.

(c) The agreement shall set forth:

1. A description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied;

2. The unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and

3. The total dollar value of the subcontract.

(d) Contractual ~~[All of these]~~ agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky and have completed the orientation program required by 600 KAR 4:010, Section 15 and are eligible to act as a certified DBE, MBE, or WBE.

(2) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count expenditures for

materials and supplies obtained from certified DBE, MBE or WBE suppliers and manufacturers, provided the DBE, MBE or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to certified MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4)(a) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count only expenditures to certified DBEs, MBEs or WBEs that perform a commercially useful function in the work of a contract.

(b) A DBE, MBE or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved.

(c) To determine if a DBE, MBE or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its certified DBE, MBE or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project and fails to demonstrate sufficient good faith efforts as set forth in Section 5 [6] of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor shall [~~should~~] not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE or WBE percentage participation of the contract.

(8)(a) If the prime contractor's subcontract is cancelled, he shall replace the approved DBE, MBE or WBE with another certified DBE, MBE or WBE firm.

(b) An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs.

(c) The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE or WBE beginning work on the project.

(d) If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE or WBE subcontractor;

(b) Use of the approved DBE, MBE or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include [~~but are not limited to the following~~]:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's supportive services contractor for assistance in identifying DBE, MBE or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified and has attended a Transportation Cabinet orientation program under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE or WBE goal.

(2) At least fifty (50) percent of the work outlined in the subcontract shall be performed by the DBE, MBE or WBE subcontractor's work force [~~shall perform the work outlined in the subcontract~~].

(3) Second tier subcontracting by a DBE, MBE or WBE subcontractor may only be accomplished if the proposed second tier subcontractor is a certified DBE, MBE or WBE and the Office of Minority Affairs has reviewed and approved the second tier DBE, MBE or WBE subcontract prior to execution.

(4) A DBE, MBE or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE or WBE as Contractor. **The provisions of** [~~Nothing in~~] this administrative regulation shall **not** be construed so as to prohibit a DBE, MBE or WBE from competing on a project in the role of prime contractor.

Section 8. DBE, MBE or WBE Noncompliance. (1) If any certified DBE, MBE or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of 600 KAR 4:010.

(4) If the Transportation Cabinet, Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 of 600 KAR 4:010.

(5) The effective date of the suspension shall be [~~is~~] thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of 600 KAR 4:010.

MAURICE SWEENEY, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: September 22, 1992
FILED WITH LRC: October 8, 1992 at 9 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended)

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

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028 [~~156.070~~], 161.030, 161.042

NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.028 [~~161.025~~] gives the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification~~] the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for approving and evaluating college, university and school district programs for the preparation of teachers and other professional school personnel [~~duty~~

~~to develop and recommend policies and standards relating to teacher preparation and certification~~]; and KRS 161.030 rests the certification of teachers and other school personnel, [~~and~~] the approval of college and university preparation programs for teachers and other school personnel [~~teacher preparatory colleges and universities~~] and their curricula with the Education Professional Standards Board. KRS 161.042 gives the Education Professional Standards Board the authority to establish requirements for supervisory personnel for student teachers. [~~State Board of Education. This regulation, which has been reviewed and recommended by the Kentucky Council on Teacher Education and Certification, establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation certification programs.~~]

Section 1. The Education Professional Standards Board incorporates by reference the "Kentucky Standards for the Preparation-Certification of Professional School Personnel, (October 1992)", which shall include the standards and procedures for the approval of college and university curricula for the preparation programs. This document may be inspected, copied or obtained from the Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~Section 1. Pursuant to the statutory authority placed upon the Education Professional Standards Board [chief state school officer, the State Board for Elementary and Secondary Education, and the Kentucky Council on Teacher Education and Certification] under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.~~

~~Section 2. The Kentucky Standards for the Preparation Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation Certification of Professional School Personnel, revised October 1992 [July, 1990]. A copy of this document can be inspected, copied and obtained from the Office of Teacher Education and Certification [Instruction, Department of Education], 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 8 a.m. 4:30 p.m., Monday Friday.~~]

[~~Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation certification for a new position shall be evaluated in writing by the office of the chief state school officer on the basis of the following criteria:~~

~~(1) There are compelling reasons for establishing a preparation certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for noncertification alternatives.~~

~~(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation certification plan. The body of knowledge is sufficiently extensive for a program of preparation twelve (12) semester hours of credit or more rather than something that can be earned in miscellaneous noncredit experiences.~~

~~(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.~~

~~(4) There is a sufficient demand for the training for this position to warrant the development of preparation certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.~~

~~(5) The preparation certification requirement is cost effective in terms of the anticipated benefits to the local school district.~~]

JANICE WEAVER, Chairman
APPROVED BY AGENCY: October 5, 1992
FILED WITH LRC: October 13, 1992 at 10 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended)

704 KAR 20:165. Qualifications for professional school positions. [~~Newly created positions.~~]

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030 [~~156.070, 156.160~~]
NECESSITY AND FUNCTION: KRS 161.020 requires appropriate certification for [~~each~~] professional education [~~school~~] position in Kentucky public schools; however, professional education [~~new~~] positions are established in the local school districts for which a corresponding certification is not issued. In [~~often created in advance of the establishment of a statewide certification program for the position.~~] this **administrative** regulation [~~empowers~~] the Education Professional Standards Board [~~identifies required~~] [~~Superintendent of Public Instruction to determine interim~~] **establishes** qualifications for **these** [~~such~~] assignments [~~until such time as a certification program is designed for the position in question~~].

Section 1. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

(1) Kentucky certification for school superintendent;

(2) A bachelor's or advanced degree in business; **or**

(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994. [~~The Superintendent of Public Instruction shall be authorized to determine the qualifications and certification requirements for positions in which no program of preparation certification has yet been established by the Kentucky State Board of Education.~~]

Section 2. Director of Districtwide Services. A director of districtwide services may qualify for this position on the basis of certification either as **a** school superintendent, supervisor of instruction, school business administrator, or principal. This **administrative** regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.

Section 3. Director of Federally Supported Programs. A director of federally supported programs may qualify for this position on the basis of certification either as **a** school superintendent, supervisor of instruction, or school principal.

Section 4. Consultant. A consultant in elementary education, special education, or in an academic subject field may qualify for the position on the basis of the following:

(1) Master's degree or nondegree fifth-year program;

(2) Certification in the appropriate subject field or service area; and

(3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 5. Reading Program Consultant. A reading program consultant may qualify for the position on the basis of certification as a reading specialist.

Section 6. Gifted Education Coordinator. A gifted education coordinator may qualify for the position on the basis of the following:

(1) A master's degree or nondegree fifth-year program;

(2) A certificate endorsement for teacher of gifted education; and

(3) Three (3) years of teaching experience.

Section 7. Special Education Work Study Program Coordinator. A special education work study program coordinator may qualify for the position on the basis of certification as a teacher of exceptional children.

Section 8. Professional Development Coordinator. The professional development coordinator may qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 9. Instructional Television Coordinator. An instructional television coordinator may qualify for the position on the basis of certification for classroom teaching.

Section 10. Instructional Coordinator. The instructional coordinator may qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 11. School Health Coordinator. A school health coordinator may qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 12. Chapter I Remedial Mathematics. Teachers holding a valid early elementary certificate, grades K-4, may qualify for teaching mathematics in Chapter I programs in grades 5-8.

Section 13. Teachers for Alternative Schools. A classroom teacher in an alternative school may qualify on the basis of any certificate valid for classroom teaching.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: October 5, 1992
FILED WITH LRC: October 12, 1992 at 2 p.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended)

704 KAR 20:210. Substitute teachers.

RELATES TO: KRS 161.020, 161.028 [~~161.025~~], 161.030, 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028 [~~156.070~~], 161.030, 161.100

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025, and 161.030~~] requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.100 provides for the issuance of emergency certificates [~~under specified circumstances~~]. This **administrative** regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with other regular certificates and in comparison with emergency certificates.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and **administrative** [~~State Board of Education~~] regulations of the Education Professional Standards Board to applicants who:

(a) Hold a valid statement of eligibility for a [~~particular type of~~] Kentucky teaching certificate; [~~as provided in 704 KAR 20:045, Section 2(6) and (7),~~] or

(b) [~~who~~] Have previously held any type of Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall be valid only for substitute teaching. [~~The certificate document shall show the type of preparation completed by the teacher and shall be valid for substitute teaching only within the grade levels covered by the validity of the certificate.~~] The Certificate for Substitute Teaching shall not be valid for continuous part-time employment for classroom teaching or as a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. Whenever substitute teachers must be employed to serve during the absence of the teacher of record for the position, priority in selection and employment shall be in accordance with the following order [~~given first to~~]:

(1) Teachers who hold appropriate regular certification corresponding to the grade level of the teaching assignment; [~~Teachers who hold regular certification for classroom teaching and teachers who hold the Certificate for Substitute Teaching, and if no teacher with such certification is available, then;~~]

(2) Teachers who hold regular certification for classroom teaching at any grade level;

(3) Teachers who hold the Certificate for Substitute Teaching;

(4) [~~(2)~~] Except as provided in subsection (5) [~~(3)~~] of this section, persons certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, shall [~~with such persons to~~] be called [~~in~~] according to the following descending order [~~of categories~~] relating to the amount of college hours completed[~~, but not necessarily according to the number of hours two (2) or more persons within the same category may have~~]:

(a) A Bachelor's degree[~~, then~~];

(b) At least ninety-six (96) semester hours of college credit[~~, then~~];

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit; [~~and then, relative to substitute vocational teachers only;~~]

(5) [~~(3) The provisions of 704 KAR 20:120, Sections 1(3) and (4) notwithstanding,~~] Persons certified on an emergency basis for substitute teaching in any health, technical, or industrial occupation with a minimum of [~~must have no less than~~] four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: October 5, 1992
FILED WITH LRC: October 12, 1992 at 2 p.m.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

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

RELATES TO: KRS 164A.560, 164A.565
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: **KRS 164A.560 vests the**

responsibility with the governing board of a public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative regulations. The function of this administrative regulation shall be to implement the provisions of KRS 164A.560(1) and KRS 164A.575 at Northern Kentucky University. ~~[KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.560 and 164A.565 at Northern Kentucky University.]~~

Section 1. **The Board of Regents of Northern Kentucky University, under the authorization of KRS 164A.560, elects to perform the financial management functions specified in KRS 164A.560(2).** ~~[The Northern Kentucky University Board of Regents elects to perform the financial management functions set forth in KRS 164A.560(2), related to the receipt, deposit, collection, retention, investment, disbursement and accounting of all funds; and KRS 164A.565 related to the installation of an accrual basis accounting system, other records and annual reports.]~~

Section 2. **The Board of Regents of Northern Kentucky University, under the authorization of KRS 164A.560, shall establish an accrual basis accounting system and perform the financial management functions specified in KRS 164A.575, Sections (2), (3), (6), (7) and (8).** ~~[The Northern Kentucky University Board of Regents elects to comply with KRS 164A.560(2)(b) to limit disbursements to the accounts and for the purposes for which the state appropriations, or other monies have been received for through the enacting resolution of the institution's annual operating budget.~~

~~Section 3. The Northern Kentucky University Board of Regents shall use an accrual basis accounting system and fund structure that conforms with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with KRS 164A.565(2), (3), (6), (7), and (8).]~~

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

760 KAR 1:020. Annual audit.

RELATES TO: KRS 164A.570
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: **KRS 164A.560 vests the responsibility with the governing board of a public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative regulations. The function of this administrative regulation shall be to implement the provisions of KRS 164A.570 at Northern Kentucky University.** ~~[KRS 164A.560 permits the governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.570 at Northern Kentucky University.]~~

Section 1. **The Northern Kentucky University Board of Regents shall engage a qualified firm of certified public accountants pursuant to KRS 164A.570.** ~~[The Northern Kentucky University Board of Regents elects to engage a qualified firm of certified public accountants for the purpose of submitting an independent opinion concerning the internal accounting controls and compliance with the provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620. The engagement of the qualified firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.]~~

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

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

RELATES TO: KRS 164A.575
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: **KRS 164A.560 vests the responsibility with the governing board of a public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative regulations. The function of this administrative regulation shall be to implement the provisions of KRS 164A.570 at Northern Kentucky University.** ~~[KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. These regulations implement the provision of KRS 164A.575 at Northern Kentucky University.]~~

Section 1. **The Board of Regents of Northern Kentucky University, under the authorization of KRS 164A.560, elects to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12).** ~~[The Northern Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects to purchase and manage interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with KRS 164A.575(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12).]~~

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

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

RELATES TO: KRS 164A.560
STATUTORY AUTHORITY: KRS 164A.555 to 164A.630
NECESSITY AND FUNCTION: **KRS 164A.560 vests the responsibility with the governing board of a public institution of**

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 is to delegate responsibilities to the president of the university. [~~KRS 164A.560(1) permits the governing board of each public institution of higher education which has elected by regulation to implement the financial management functions authorized by KRS 164A.555 to 164A.630 to delegate these responsibilities by regulation to appropriate officials of the university. This regulation provides for such delegations.~~]

Section 1. (1) The president of the university shall be authorized by the Board of Regents of Northern Kentucky University to perform the financial management functions specified in KRS 164A.565, 164A.575, and 164A.620.

(2) The president shall be responsible for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents. [~~The Northern Kentucky University Board of Regents, under the provision of KRS 164A.560, elects to delegate responsibility for the financial management provisions of KRS 164A.560, 164A.565, 164A.575 and 164A.620 to the president of the university. Further, the Board of Regents delegates to the president responsibility for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents.~~]

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

760 KAR 1:050. Issuance of bonds.

RELATES TO: KRS 164A.605
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 vests the responsibility with the governing board of a public institution of 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.605 at Northern Kentucky University. [~~The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.605 at Northern Kentucky University.~~]

Section 1. The Northern Kentucky University Board of Regents, under the provision of KRS 164A.560, elects the authority to issue bonds subject to the conditions as set forth in KRS 164A.605.

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
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NORTHERN KENTUCKY UNIVERSITY
Board of Regents
(As Amended)

760 KAR 1:060. Fund for excellence.

RELATES TO: KRS 164.410, 164A.620
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 vests the responsibility with the governing board of a public institution of 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.620 at Northern Kentucky University. [~~The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.620 at Northern Kentucky University.~~]

Section 1. The Northern Kentucky University Board of Regents authorizes the establishment of a fund for excellence pursuant to KRS 164A.620. [~~The Northern Kentucky University Board of Regents, under the provisions of KRS 164A.560, elects and authorizes the establishment of a fund for excellence under the conditions and for the purpose as set forth in KRS 164A.620.~~]

WILLIAM G. VERST, Chairman
DR. LEON E. BOOTHE, President
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 14, 1992 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS 230.215(2) [~~Chapter 13A~~]
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the use of medication on the horses and requirements and controls in the administration of drugs or medications [~~thereof~~].

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) While participating in a race, a horse shall not carry in its body any medication, drug, substance, or metabolic derivative, which:

(a) Is a narcotic;

(b) Could serve as a local anesthetic or tranquilizer; or

(c) Could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed. [~~No horse while participating in a race shall carry in its body any medication, drug, substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or~~

~~central nervous system of a horse, thereby effecting its speed.~~]

(2) [~~Any~~] Drugs which may mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(3) Proof of detection by the commission chemist of a medication, drug, substance, or metabolic derivative [~~thereof~~], prohibited by subsection (1) of this section, in a saliva, urine, blood, or other specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that the horse was administered and carried prohibited medications, drugs, or substances, in its body while running in the race in violation of this administrative regulation.

[~~(4) Medications, drugs, or substances shall be used consistently on horses. Permission to change the use of any nonsteroidal anti-inflammatory drug or bleeder medication shall be obtained from the commission veterinarian.~~]

Section 2. When Administration Prohibited. **Only** [~~No person other than~~] a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which the horse is entered and prior to the race. [~~No~~] Medication**s**, drug**s**, or substance**s** shall **not** be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian**s**.

Section 3. Responsibility for Prohibited Administration. (1) **A** [~~Any~~] person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this **administrative** regulation, or caused, or participated, or attempted to participate in any way in the administration, of **medications, drugs, or substances** [~~such~~], shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering. Failure to prove freedom from negligence or reliance on the professional ability of a licensed veterinarian shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation, if found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing the treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action:

(1) Daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily reports shall be in complete accord**. A** [~~; any~~] deviation **in the treatment and reports** shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. This list when published shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing. The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. **Horses to be Tested. (1) The stewards may at any time order the taking of a blood, urine, saliva or other specimen from any horse entered to be tested.**

(2) Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist.

(3) The costs of testing shall be borne by the owner or trainer requesting the test.

(4) In the absence of any order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which:

(a) Finish first in any race;

(b) Finish first or second in any quinella or exacta race;

(c) Finish first or second or third in any stakes; and

(d) Any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

[~~Horses to be Tested. The stewards may at any time order the taking of a blood, urine, saliva or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist. The costs of testing shall be borne by the owner or trainer requesting the test. In the absence of any order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.~~]

Section 8. Procedure for Taking Specimens. (1) [~~All~~] Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. **Only** [~~No person other than~~] the owner, trainer, groom, or hotwalker of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.

(2) **Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.**

(a) Buckets and water shall be furnished by the commission veterinarian.

(b) If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the commission veterinarian. [~~Stable equipment other than necessary for washing and cooling out a horse shall be prohibited in the detention area; buckets and water shall be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a~~

~~horse in the detention area only in the presence of the commission veterinarian.~~]

(3) One (1) of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

(a) The owner;

(b) The responsible trainer who, in the case of a claimed horse shall be the person in whose name the horse raced; or

(c) A stable representative designated by such owner or trainer. [~~During the taking of specimens from a horse, the owner; responsible trainer who, in the case of a claimed horse shall be the person in whose name the horse raced; or a stable representative designated by such owner or trainer, shall be present and witness the taking of the specimen and so signify in writing.~~]

(4) [~~All~~] Containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in double containers and designated as the "primary" and "secondary" samples.

(a) These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section.

(b) The commission veterinarian shall:

1. Identify the horse from which the specimen was taken;

2. Document the race and day, verified by the witness; and

3. Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

(c) After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory.

(d) The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and, as near as possible, shall be preserved in the same condition and temperature.

(e) The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be properly disposed. [~~Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which the specimen was taken, as well as the race and day, verified by the witness, and the detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and, as near as possible, shall be preserved in the same condition and temperature. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.~~]

(g) [~~(a)~~] If after a horse remains a reasonable time in the detention area and a specimen may not be taken from the [~~such~~] horse, the commission veterinarian may permit the [~~such~~] horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(h) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml.

(i) Blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples.

1. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc.

2. In the event of an initial finding of a prohibited drug or of a negative in violation of these administrative regulations, the commission chemist shall notify the commission, both orally and in writing, and an oral or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of the initial finding.

(j) Upon an initial finding of a prohibited drug or negative, the commission veterinarian shall immediately freeze the "secondary" urine sample.

1. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested.

2. Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) laboratories approved by the Kentucky Racing Commission.

(k) The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged.

1. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these administrative regulations may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

2. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test.

3. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(l) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the commission chemist as soon as possible after sealing, but a manner so as not to reveal the identity of a horse from which the sample was taken.

[~~(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance~~

~~of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.~~

~~(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.~~**]**

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and **the second** **[**~~another~~**]** portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening **the specimen** **[**~~same~~**]** for prohibited substances, and **[**~~such~~**]** other tests as **necessary** to detect and identify any suspected prohibited substance or metabolic derivative **[**~~thereof~~**]** with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3)**(a)Upon the finding of a test negative for prohibited substances, the remaining portions of the specimen may be discarded.**

(b) Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portions, if available, of the specimen shall be preserved and protected until such the stewards rule that the specimen shall be discarded. **[**~~Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.~~**]**

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating **[**~~thereon~~**]** by specimen tag identification number, whether **[**~~such~~**]** a specimen was tested negative or positive for prohibited substances. The commission chemist shall **not** report **the** test findings to **[**~~no~~**]** person**s** other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until **it is** given clearance of chemical tests by the stewards.

(5)**(a) The commission chemist shall make a further report to the state steward on any substance which his tests reve al are not normal in a horse.**

(b) These reports shall be confidential and are not evidence for disciplinary action.

(c) These reports may be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky.

(d) The residue of specimen material from these tests shall be preserved by the commission chemist until released by the racing commission. **[**~~The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.~~**]**

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of **a** **[**~~such~~**]** professional opinion as to **a** **[**~~such~~**]** positive finding.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: September 29, 1992
FILED WITH LRC: October 14, 1992 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

810 KAR 1:027. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.260
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person authorized by either.

(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person authorized by either.

Section 2. Entering Required. **A** **[**~~No~~**]** horse shall **not** be qualified to start in any race unless it has been and continues to be duly entered **in a race** **[**~~therein~~**]**. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.

(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.

(3) An entry shall be in writing or by telephone to the racing secretary. Telephone entries shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.

(a) **A** ~~[No]~~ horse shall **not** race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. ~~[All such]~~ Persons shall be subject to appropriate disciplinary action for incorrect identification.

(c) Horses requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding, **shall** ~~[must]~~ be registered ~~[as such]~~ with the commission veterinarian. Horses so **registered** ~~[categorized]~~ shall remain, and removal **shall require** ~~[requires]~~ commission veterinarian approval. After inclusion, ~~[no]~~ additional notification shall **not** be required. Horses **which are** not properly registered **shall** ~~[will]~~ not be permitted to race with antibleeder medications, drugs, or substances. Registration **shall** ~~[must]~~ be made prior to entry. The racing program will indicate usage. ~~[An entry shall clearly state all medications, drugs, or substances which the horse shall receive as prerace treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: nonsteroidal anti inflammatory drugs shall be designated by (B); and all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).]~~

(5) ~~[No]~~ Alterations, except an error corrected with the permission of the stewards, shall **not** be made in an entry after the closing of entries.

(6) **A** ~~[No]~~ horse shall **not** be entered in two (2) races to be run on the same day.

(7)(a) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry. ~~[A horse which has not started in the past ninety (90) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.]~~

(c) If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing.

(d) The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race.

(e) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. **Entries** ~~[No entry]~~ shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. **Entries** ~~[No entry]~~ in a race shall **not** be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at **the** time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsection (5) of this section.

(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse ~~[thereof]~~, shall be joined as a mutuel entry and single betting interest.

(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse ~~[thereof]~~, a preference for one (1) of the horses shall be made.

(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.

(5) In thoroughbred stakes races with added money of $100,000 or more, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before **the** ~~[such]~~ races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by **the following** ~~[such]~~ conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided for in an administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of **the** ~~[such]~~ split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence draw, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) ~~[No]~~ Preference**s** shall **not** be given **to** a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, ~~[no]~~ horse shall **not** be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. **A** ~~[No]~~ declaration fee shall **not** be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If:

(a) Horses representing more than ten (10) betting interests in either of the two (2) daily double races; or

(b) Horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners

or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: September 29, 1992
FILED WITH LRC: October 13, 1992 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended)

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This administrative regulation **adopts the BOCA National Building Code/1990, Eleventh Edition, Articles 2 through 32 and Appendices A through D with modifications and** establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This administrative regulation includes the substance of 815 KAR 7:020, which is being repealed. This amendment is necessary to clarify the code requirements of horizontal sliding doors in Section 8; amend seismic requirements in Sections 11 and 13, and amend Appendix A relating to the Safety Code for Elevators and Escalators. [~~This amendment is necessary to update the reference to NFPA Pamphlets dealing with sprinkler systems to the latest edition. This change was approved by the Board of Housing on January 23, 1992.~~]

Section 1. **Article 2 of the BOCA National Building Code/1990, Eleventh Edition (BOCA Code) incorporated in Section 2 of this administrative regulation is amended to add the following definitions:** [~~Article 2, Definitions. Amend Article 2 by adding the following definitions:~~]

(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.

(2) "Article" means an article of the "BOCA National Building Code/1990", Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(3) [~~(2)~~] "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(4) [~~(3)~~] "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.

(5) [~~(4)~~] "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.

(6) [~~(5)~~] "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.

(7) [~~(6)~~] "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.

(8) [~~(7)~~] "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.

(9) [~~(8)~~] "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.

(10) [~~(9)~~] "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.

(11) [~~(10)~~] "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).

(12) [~~(11)~~] "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$SC = \frac{\text{Solar Heat Gain of Fenestration}}{\text{Solar Heat Gain of 1/8-inch Clear Glass}}$$

(13) [~~(12)~~] "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.

(14) [~~(13)~~] "Smoke detector, single station" means an assembly incorporating the detector, control equipment and the alarm- sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.

(15) [~~(14)~~] "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)

(16) [~~(15)~~] "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals pertaining to a fire emergency.

(17) [~~(16)~~] "Wireless initiating device" means an initiating device which communicates with associated control or receiving equipment by means of wireless transmission medium.

Section 2. Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as if set forth at length herein, except as amended in Section 2 through 34 of this administrative regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety **and in its place** [:] all requirements for the administra-

tion and enforcement of this administrative regulation **shall be [~~are~~]** set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught. 304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E."

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if all of the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fire-resistance Ratings of Structure Elements (In Hours), by creating a footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and l)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

(2) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(3) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(4) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing for accessible buildings and facilities."

(5) Delete subsection 513.1, Approval, in its entirety.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

(2) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system shall be permitted."

(3) Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 126.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and

to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of stories above grade	Maximum occupants, travel distances[d] or dwelling units per floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating Without sprinkler system	Required Fire-resistance Rating With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a],[f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend Section 813.4, Door hardware, by creating an additional exception to read as follows: "6. Horizontal sliding doors complying with subsection 813.4.3."

(9) [~~(8)~~] Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(10) Amend subsection 813.4.3 by adding the following language to the end of the existing subsection: "Horizontal sliding doors complying with this section shall be permitted. A sign shall be placed on the egress side of the door in a conspicuous location which reads, "In case of emergency, push to open." The sign shall be in letters not less than two (2) inches high and mounted approximately sixty (60) inches above the finished floor."

(11) [~~(9)~~] Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(12) [~~(10)~~] Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.
2. Buildings of Use Group I-3.
3. Floors that exceed five (5) stories or sixty-five (65) feet in

height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of

exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend subsection 1113.1 to read as follows: "1113.1 General: Every building and structure, and portion thereof, shall be designed and constructed to resist the earthquake effects determined in accordance with this section. Seismic zones shall be determined by location in Figure 1113.1; except that the risk zone assigned to each listed county on Page 283 shall supersede any general area requirements as shown on the face of the map. Where wind load requirements of Section 1112.0 would produce higher stresses, these stresses shall be used in lieu of the stresses resulting from earthquake forces."

(4) Amend subsection 1113.1 by creating an additional exception to read as follows: "4. Alternate method: Any building or structure designed and constructed in conformity with all seismic related provisions located between pages 249 and 353 of the 1992 Accumulative Supplement of the BOCA National Building Code together with the special inspection requirements of Section 1308.1 shall be exempt from the requirements of this section."

(5) [~~(3)~~] Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1			
Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley
Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2	
Bell	Hopkins
Caldwell	Letcher
Calloway	Lyon
Crittenden	Trigg
Harlan	Union
Henderson	Webster

Earthquake Risk Zone #3	
Ballard	Hickman
Carlisle	Livingston
Fulton	Marshall
Graves	McCracken

(6) [~~(4)~~] Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Amend subsection 1308.1 to read as follows: "1308.1 General: The owner shall provide special inspections where application is made for construction under the alternative method of seismic design allowed by subsection 1113.1(4). The special inspections required by subsections 1308.1 through 1308.8 shall apply to seismic related construction only and this section shall not be mandatory for any other permit or construction. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exceptions:

1. Special inspections are not required for work of a minor nature or when warranted by conditions approved by the building official.

2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by KRS Chapters 322 and 323.

3. Special inspections are not required for buildings of Use Group R-3." [~~Delete subsections 1308.1 through 1308.8 in their entirety.~~]

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsec-

tion to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a

travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990 with the exception of rule 102.2(c)(4)".

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80,

#82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1991 Edition."

(7) Amend Appendix A by changing the Edition date to "1991" for National Fire Protection Association (NFiPA) Pamphlets #13 and #13R.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 17, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:071. Storage and installation of schedule 40, ABS and PVC plastic pipe and fittings.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the method needed for storage, handling and installation of schedule 40, ABS and PVC plastic pipe and fittings. This administrative regulation is being amended because new fittings are now available which allows for expansion when connecting plastic pipe to metal as well as a new means of connecting different kinds of plastic pipe. [~~This amendment to Section 7 of this regulation is necessary to allow for the greater rate of expansion of plastic pipe when plastic pipe is added to a metallic piping system.~~]

Section 1. Storage. (1) Pipe. Pipe shall remain in lifts until ready for use. Lifts shall not be stacked more than three (3) high and shall always be stacked wood-on-wood. Loose pipe shall be stored in racks with a minimum support space of three (3) feet. Pipe shall be shaded but not directly covered when stored outside in high ambient temperatures to [~~. This will~~] provide for free circulation of air and reduce the heat buildup due to direct sunlight exposure.

(2) Fittings. Fittings shall be stored in their original cartons to be kept free of dirt and to reduce the possibility of damage. If [~~When~~] possible, [~~all~~] fittings shall be stored indoors.

(3) Solvent cement and primers. Solvent cement and primers[~~, because of flammability,~~] shall [~~be stored in an area where they will~~] not be exposed to ignition, sparks, open flames or heat during storage and [~~. They~~] shall not be used beyond their marked shelf life.

Section 2. Handling. Care shall be exercised to avoid rough handling of pipe and fittings. They shall not be dragged over sharp projections, dropped or have heavy objects dropped on them. Pipe ends shall be inspected for cracks in the event of abuse prior to installation. (If [~~When~~] transported by truck or trailer, piping shall be reasonably supported.)

Section 3. Installation. (1) Underneath concrete floors. [~~All~~] Pipe and fittings shall be laid on stable earth conditions and have four (4) inches of grillage on its bottom, top and sides. If ground is unstable, it shall be removed and the excavation filled with grillage to the underneath side of the piping. [~~No part of a~~] Soil or waste pipe shall not be placed in a concrete slab except those pipes that pass vertically through it.

(2) Above concrete floors. [~~All~~] Horizontal piping shall be properly aligned and installed without strain. Piping shall not be bent or pulled in position either before or after solvent welds have been made. It shall be supported at intervals not to exceed four (4) feet and at the end of the branches and at the change of direction and shall be so installed as to permit freedom of movement. [~~All~~] Vertical piping shall be supported at their bases and all upward movement shall not be restricted. Closet flanges shall be securely fastened to the floor through which it passes.

Section 4. Hangers. Hangers and straps shall be at least one (1) inch wide and shall not compress, distort, cut or abrade the piping to [~~. They shall~~] allow free movement at all times.

Section 5. Making Solvent Cement Joints. (1)(a) Cement shall not be thinned. [~~All~~] Cement that has thickened shall be discarded. [~~No~~] Cement shall not be used beyond its shelf life and [~~. It~~] shall not be subject to temperatures below thirty (30) degrees Fahrenheit.

(b) Installers shall avoid prolonged breathing of vapors. Prolonged contact with skin is harmful. Install only with adequate ventilation. Avoid contact with eyes and skin. Solvents are also flammable.

(2) Socket fit. ABS and PVC fittings are manufactured to a close tolerance. [~~All~~] Joints shall be an interference fit between pipe and fittings. Additional cement shall not be permitted for the correction of loosely fitted joints.

(3) Joining techniques. Piping shall be cut square with a saw or pipe cutter designed especially for plastic pipe. Pipe and fittings shall be protected from serrated holding devices or abrasions.

(a) Burrs shall be removed from both inside and outside of the pipe. Dust, dirt and moisture shall be removed from the surfaces that shall [~~are to~~] be cemented.

(b) Solvent chemical cleaner recommended by the company whose product is being installed shall be applied inside the fitting and on the outside of the piping shall [~~that is to~~] be joined.

(c) A paint brush shall be used to apply the solvent cement in [~~. Apply~~] a moderate, even coating [~~of cement~~] in the fitting socket as well as covering the pipe on the joining surfaces [~~only~~].

(d) Joints shall be assembled as quickly as possible before the cement dries. Insert the piping into the fitting socket turning the pipe slightly to ensure even distribution to the cement. Hold the piping in a firm position so it does not "back out" of the joint.

(e) Remove excess solvent cement from the exterior of the joint with a clean dry cloth. The joint shall not be handled for a two (2) minute period. A fifteen (15) minute period shall be allowed for the joint to develop hanging strength.

(f) A [~~No~~] Cemented pipe joint shall not be made in conditions of excessive moisture **(ninety (90) percent humidity level)** [~~, humidity~~] or when the temperature is below forty (40) degrees or above ninety (90) degrees Fahrenheit.

Section 6. Commingling of Plastic Pipe. Plastic pipe shall not be commingled except through the use of male and female adapters or other transition fittings approved by administrative regulation of the department.

Section 7. Mixing of Plastic and Metal Piping. Plastic and metal piping shall discharge into one another by the use of proper fittings and adapters. [~~If a waste opening or openings using plastic pipe are added to an existing system of metallic piping, the main vent of the added waste opening shall extend through the roof separately to allow for expansion.~~]

Section 8. Thermal Expansion. Each plumbing installation shall be engineered and designed giving due consideration to the expansion characteristics of the material. [~~Below are~~] Expansion tables for both PVC and ABS schedule 40 plastic piping are as follows:

PVC-DWV TYPE 1
THERMAL EXPANSION TABLE

Chart Shows Length Change in Inches
vs. Degrees Temperature Change

LG. FT.	40oF	50oF	60oF	70oF	80oF	90oF	100oF
20	278	.348	.418	.487	.557	.626	.696
40	.557	.696	.835	.974	1.114	1.235	1.392
60	.835	1.044	1.253	1.462	1.670	1.879	2.088
80	1.134	1.392	1.670	1.949	2.227	2.506	2.784
100	1.392	1.740	2.088	2.436	2.784	3.132	3.480

ABS-DWV TYPE 1
THERMAL EXPANSION TABLE

Chart Shows Length Change in Inches
vs. Degrees Temperature Change

LG. FT.	40oF	50oF	60oF	70oF	80oF	90oF	100oF
20	0.536	0.670	0.80	0.938	1.072	1.206	1.340
40	1.070	1.340	1.610	1.880	2.050	2.420	2.690
60	1.609	2.010	2.410	2.820	3.220	3.620	4.020
80	2.143	2.680	3.220	3.760	4.290	4.830	5.360
100	2.680	3.350	4.020	4.700	5.360	6.030	6.700

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 25, 1992
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies and publishes the manufacturer's [~~standard~~] specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems. This amendment is necessary to delete obsolete manufacturing specifications and replace with current specifications in Section 6 of this administrative regulation, and to clarify that up to three (3) water closets can discharge into any three (3) inch line (not just vertical stacks) in Section 7 of this administrative regulation. [~~This amendment (Section 26) allows an alternative for venting floor drains and open receptacles in commercial kitchens if the waste line discharges into a four (4") inch master trap before entering the sanitary sewer system. This amendment was approved by the Plumbing Code Committee on November 6, 1991 and the Board of Housing on January 23, 1992.~~]

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) Stacks shall be supported at their bases and all pipes shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible.

(5) Polyethylene pipe and fittings must be continuously supported with a V channel.

(6) Stacks shall be rigidly supported at their bases and at the floor level.

Section 2. Change in Direction. Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bends, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees. **Double sanitary tees may be used on vertical soil, waste and vent lines.**

Section 3. Prohibited Fittings. Double hub bends and double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands shall be prohibited. [~~Double sanitary tees may be used on vertical soil, waste and vent lines.~~] Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, dead ends shall **not be used without special permission from the department** [~~be avoided~~].

Section 5. Protection of Material. Pipes passing under or through walls shall be protected from breakage. Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312 [~~CS-268-68~~], polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90 [~~76~~], D-1788-73 or F-628, silicon iron or borosilicate.

(2) All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2

2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		96
5		180
6		420
8		1200
10		2400
12		4200

Water closets shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line [~~stack~~].

Section 8. Soil, and Vent Stacks. Building in which plumbing fixtures are installed shall have a soil or waste and vent stack, or stacks extending full size through the roof. Soil or waste and vent stacks shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that no more than three (3) water closets shall discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with all other sections of this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain shall be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. Soil and waste stacks and branches shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be either cast iron, lead, brass, copper, or plastic closet bends. Three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. Fixture connections shall not be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. Roof extensions of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. Stacks of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste line of the main waste, soil, or vent pipes shall be washed. Fixture traps shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. If it becomes necessary to increase a vertical vent stack, it becomes a main vent and shall comply with other sections of this administrative regulation.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for residential installations, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. Vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall not require individual vents when placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. Open receptacles may be connected to floor drain lines without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with other sections of this administrative regulation. The connections shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. Corrosive liquids shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with the other sections of this administrative regulation **and** [:] all fixtures shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) Fixture branches exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented **and** [,] the distance shall be measured from the center of the main to the center of the vertical riser.

(6) Fixture connections shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink **and** [,] two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation. EXEMPTION: Basement floor drains, in single family dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.010, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering buildings and homes that are served by plumbing systems. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to delete language in Section 13 that is no longer enforced by the division and make amendments to comply with KRS Chapter 13A drafting rules. [~~Amendment of Section 8 of this regulation will allow the use of a Y or T clean out to be used which has been acceptable plumbing practice for years with a second clean out either inside or outside the building. Language in Section 15 of this regulation is archaic and was amended to allow a two (2) inch floor drain in residential occupancies, particularly in second story apartments.~~]

Section 1. Traps, Kind and Minimum Size. Every trap shall be self-cleaning. Traps for bathtubs, lavatories, sinks and other similar fixtures shall either be tubular brass, tubular ABS or PVC produced and labeled as [~~conforming to~~] ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene- styrene) traps. Tubular or schedule 40 PVC or ABS p-traps may be either the union-joint or solvent welded type. Tubular brass traps shall be seventeen (17) gauge. [~~No~~] Tubular brass, tubular PVC or tubular ABS traps shall not be installed below the finished floor serving a fixture. Traps shall have a full-bore, smooth interior waterway. The threads in cast brass and cast iron traps shall be tapped out of solid metal. Lead traps shall be extra heavy. [~~Copies of this specification may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~]

Section 2. Traps, Prohibited. A trap which depends upon the action of movable parts or concealed interior partitions for its seal shall not be used.

Section 3. Traps, Where Required. A [~~Each~~] fixture shall be separately trapped by a water-seal trap placed as near [~~to the fixture~~] as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal. [~~In no case shall the~~] Waste from a bathtub or other fixture shall not discharge into a water closet bend. A [~~No~~] fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal [~~of~~] not less than two (2) inches or [~~nor~~] more than four (4) inches.

Section 5. Trap Clean-outs. Trap clean-outs shall be [~~are~~] optional.

Section 6. Trap Levels and Protection. [~~All~~] Traps shall be set true with respect to their water seals and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. The bodies of clean-out ferrules shall be made in standard pipe sizes, conforming in thickness to that of the pipe and fittings and shall not extend [~~not~~] less than one-quarter (1/4) inch above the hub in which it is placed. The clean-out cap or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, where Required. A clean-out shall be easily accessible and [,] shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full size branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and shall not be less than four (4) inches for larger pipe.

Section 9. Manholes. [~~All~~] Underground clean-outs in a building, except where clean-outs are flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A [~~Any~~] floor or wall

connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. If [~~When~~] a grease trap is installed, it shall be placed as near [~~as possible~~] to the fixture it serves as practical and shall be approved by the department. [~~All~~] Grease traps used inside a building shall have a sealed cover and shall be properly vented. Grease traps shall be installed for [~~all~~] restaurants and food service establishments and other business establishments [~~as well as other types of businesses~~] deemed necessary by the Department of Housing, Buildings and Construction or as required by municipal ordinance. If [~~In the case of~~] food establishments use [~~using~~] a private sewage system, grease traps shall be installed as required by [~~in~~] the Cabinet for Human resources administrative regulation 902 KAR 10:085.

Section 12. Sand Traps. Sand traps shall be [~~designed and located so as to be~~] readily accessible and shall meet the requirements of the Department of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. A basement floor drain shall connect to [~~into~~] a trap and [~~so constructed that it can be~~] **be** readily accessible for cleaning [~~cleaned~~] and shall be of sufficient [~~of a~~] size to serve [~~efficiently~~] the purpose [~~for which it is~~] intended. If drains are [~~When~~] subject to back flow or back pressure, the [~~such~~] drains shall be equipped with **a [~~an adequate~~]** backwater valve **approved by administrative regulation of the Department of Housing, Buildings and Construction**. [~~The trap seal shall be at least four (4) inches above the flow line of the house drain.~~]

Section 14. Back Water Valves. A back water valve shall be of noncorrosive metals and shall be [~~so~~] constructed [~~as~~] to insure a positive mechanical seal except when discharging wastes.

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. Kitchen sink units, or fixtures with more than one (1) unit may be connected with a continuous-waste, if [~~provided~~] a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
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CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 250.33, 250.73, 255, 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39) [~~PL 101-508~~]
STATUTORY AUTHORITY: KRS 194.050, 205.200(2)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC. This administrative regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Assistance group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent, and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program **shall [~~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) "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(10) "Deducation" means an amount subtracted from gross income to determine countable income.

(11) "Excluded income" means income that is received but not counted in the gross income test.

(12) [~~(9)~~] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(13) [~~(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.

(14) [~~(11)~~] "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this **administrative** regulation.

(15) [~~(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.

(16) [~~(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.

(17) [~~(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).

(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.

(19) [~~(16)~~] "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(20) [~~(17)~~] "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(21) [~~(18)~~] "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(22) [~~(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.

(23) [~~(20)~~] "Recoupment" means recovery of overpayments of assistance payments.

(24) [~~(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.

(25) [~~(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.

(26) [~~(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.

(27) [~~(24)~~] "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(28) [~~(25)~~] "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

(29) [~~(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**, for** [~~. This exemption shall not exceed~~] a period of nine (9) months **or less.**

1. [~~and is contingent upon~~] The assistance group **shall agree** [~~agreeing~~] to repay AFDC benefits received beginning with the first month of the exemption.

2. 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.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. 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 **it is determined by the cabinet that** 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 **shall not exceed the gross income limitation standard. This income includes:**

1. Income of the assistance group;

2. Income of a parent;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the assistance group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and

sponsor's spouse if living with the sponsor. [~~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) **Excluded income types** [~~Disregards~~] specified in Section 4(1) of this **administrative** 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 **excluded income and deduction policy** [~~exclusions or disregards~~] set forth in Section 4(1) and (2) of this **administrative** regulation shall be compared to the assistance standard set forth in Section 7 of this **administrative** 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 **subtracting excluded income and applicable deductions** [~~applying disregards~~] in Section 4(1), (2), and (3) of this **administrative** regulation.

(b) If the assistance group's income, after **subtracting excluded income and applicable deductions** [~~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 **and Deductions** [~~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 **the** [~~such~~] assistance group and stepparent living in the home, shall be considered with the **application of excluded income and deduction policy** [~~applicable exclusions or disregards~~] as set forth **in the following subsections** [~~below~~]:

(1) Gross income test. [~~All~~] Incomes listed **in this subsection** [~~below~~] shall be excluded [~~or disregarded~~]:

(a) **Deductions** [~~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 **administrative** regulation;

(b) **Deductions** [~~Disregards~~] applicable to alien sponsor's income, as set forth in Section 6 of this **administrative** regulation;

(c) **Deductions** [~~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. **Excluded income** [~~The exclusions or disregards set forth~~] in subsection (1) of this section and **any applicable deduction** [~~those~~] listed **in this subsection** [~~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 **deduct** [~~disregard~~] all incomes listed in subsections (1) and (2) of this section as well as **deductions listed in this subsection**:

(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 **deducted** [~~disregarded~~], if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this **deduction** [~~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 **deduction** [~~disregard~~] shall be applied concurrently with the one-third (1/3) **deduction** [~~disregard~~], however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These **deductions** [~~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. **Deductions** [~~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 **a prospective job or training site would** [~~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 **deductions** [~~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 **deductions** [~~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 **deductions** [~~disregards~~] as set forth **in this section** [~~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 **deductions** [~~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 **subtracted** [~~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 **payments described** [~~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 post-secondary 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 administrative 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 13, 1992 at 3 p.m.

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

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

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

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

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq., 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 **administrative** 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)**(a)** 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.

(b) 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 **not** 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 **administrative** 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 **the same as** **[~~worse than~~]** households not receiving benefits;

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

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

MIKE ROBINSON, Commissioner
LEONARD E. HELLER., Secretary
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 13, 1992 at 3 p.m.

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

904 KAR 3:050. Additional provisions.

RELATES TO: KRS 194.050, 7 CFR 272.1, 272.5, **7 CFR 273.16,** [~~273.16,~~] 273.17, 273.18, 273.18(d)(4)(iii), 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~is required to~~] administer a Food Stamp Program as prescribed under 7 USC 2011 to 2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth additional provisions used by the cabinet in the administration of the Food Stamp Program. [~~This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.~~]

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if a household has lost benefits:

(a) Due to an administrative error;

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claims the household may have.

Section 3. Program Informational Activities. (1) Low-income or disadvantaged households shall be informed of the availability of the program, program rights and responsibilities through program informational activities including posters and pamphlets from the food and nutrition service.

(2) Other programs that households shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children (WIC); and

(b) Expanded Food and Nutrition Education Program (EFNEP).

Section 4. Identification of Claims Against Households. The cabinet shall establish a claim against a household that receives more food stamp benefits than it is entitled to receive.

Section 5. Classification of Claims. Claims shall be classified as:

(1) Inadvertent household error claims. Overissuance was due to:

(a) A misunderstanding or unintended error on the part of the household;

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving SSI; or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 904 KAR 3:030, Section 5, that receives food stamps solely because of categorical eligibility, and is subsequently determined ineligible for either PA or SSI or both.

(2) Administrative error claims. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits; or

(d) Continuing to issue benefits after the certification period expired without a reapplication determination.

(3) Intentional program violation claims.

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 904 KAR Chapter 3, or any state statute relating to the Food Stamp Program.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A court of appropriate jurisdiction;

3. An individual signing either a waiver of his disqualification hearing; or

4. An individual signing a disqualification consent agreement in cases referred for prosecution.

Section 6. Collecting Claims Against Households. The cabinet shall initiate collection action against households with an established claim in accordance with the following criteria:

(1) All claims identified in Section 5 of this regulation, as inadvertent household and administrative error claims, shall have collection action initiated unless the:

(a) Claim is collected through offset;

(b) Claim is less than thirty-five (35) dollars and cannot be recovered by coupon reduction; or

(c) Department has documentation that the household cannot be located.

(2) A claim identified in Section 5 of this regulation, as an intentional program violation claim, shall have collection action initiated unless:

(a) The household has repaid the overissuance;

(b) The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution.

(3) Payments for claims against the household shall be collected as follows:

(a) If the household is financially able to pay the entire amount of the claim, either as cash payment or food stamp coupons, by lump sum payment;

(b) Installments as negotiated with the household either as cash payment or food stamp coupons; or

(c) Reduction in the food stamp allotment in accordance with the following criteria:

1. For inadvertent household error claims, the amount of reduction shall be the greater of ten (10) percent of the household's monthly allotment or ten (10) dollars per month;

2. For administrative error claims, the amount of reduction shall be negotiated with the household;

3. For intentional program violation error claims, the amount of reduction shall be the greater of twenty (20) percent of the house hold's monthly entitlement or ten (10) dollars per month.

(4) An individual who has defaulted on repayment of his debt shall have **the** [~~such~~] debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

2. An inadvertent household error as described in Section 5(1) of this administrative regulation; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;

2. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

3. An inadvertent household error as described in Section 5(1) of this administrative regulation.

(5) [~~(4)~~] Disqualification from the Food Stamp Program shall be imposed on an individual with intentional program violation error claims. The individual shall be ineligible to participate in the program:

(a) For the first violation, six (6) months;

(b) For the second violation, twelve (12) months; and

(c) For the third violation, permanently.

Section 7. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Persons directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029;

(b) Other federal assistance programs; or

(c) Federally aided state programs which provide assistance, on a means-tested basis, to low income households;

(2) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(3) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

(a) The identity of the person requesting the information and his authority to do so;

(b) The nature of the violation being investigated; and

(c) The identity of the person about whom the information is requested.

Section 8. General Program Information. 904 KAR Chapter 3 shall be maintained in the central and local office for examination by members of the public on regular workdays during regular office hours. Copies of administrative regulations, may be obtained from the cabinet. Federal laws and regulations shall be maintained by the central office and the FNS and shall be available for inspection and copying.

Section 9. Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 10. Disaster Certification. The cabinet shall distribute emergency coupon allotments to a household within a food stamp county determined to be a disaster area:

(1) In accordance with 42 USC 5122, authorized by the Food and Nutrition Service of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) In accordance with 7 USC 2011-2029, authorized by the Food and Nutrition Service as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: October 11, 1992
FILED WITH LRC: October 13, 1992 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services
(As Amended)

905 KAR 1:350. Family preparation section.

RELATES TO: KRS 199.462, 199.471, 600.020, 605.090-130, 42 USC 671, et seq.

STATUTORY AUTHORITY: KRS 194.050, 199.472, 605.150

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.472 and 605.150 the Department for Social Services has promulgated administrative regulations that shall enable staff to determine the applicant's capacity for adoptive or foster parenthood pursuant to KRS 605.090 through 130. This administrative regulation has been promulgated in compliance with KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter.

Section 1. Definitions. (1) "Family annual reevaluation" means a periodic joint evaluation process used by the department and foster or adoptive parents to:

(a) Assess the changes in a family;

(b) Review the ability of the family to meet the needs of children; and

(c) Determine continuing compliance with standards and expectations.

(2) "Family preparation" means a joint assessment process used by the department and the applicant for the purpose of determining whether the family may serve children the department has available for placement and how they may best meet these children's needs.

(3) "Foster or adoptive family review" means an assessment process used by the department when factors are identified which may put the family under stress and may affect the placement of a child.

(4) "Foster home contract" means a written contract, the DSS-111 incorporated by reference in 905 KAR 1:340, Out-of-home care, that

details mutual expectations of the department and the family home for the twenty-four (24) hour care of the children.

Section 2. General Requirements for Foster and Adoptive Parents. (1) Foster and adoptive applicants and approved families shall meet the following requirements with exceptions approved by the family services district manager:

(a) Personal qualities and relationships that enable them to perform the responsibilities entailed in caring for children.

(b) Applicants shall be between the ages of twenty-one (21) and sixty-five (65) years and may be of an age to have naturally parented the age child they seek to have placed with them**; and** [:]

(c) The number of children in a home shall be determined by the stamina, capacities and skills of the parents, physical accommodations of the home, and the effect of a child's placement on the equilibrium of the family as a unit.

1. Except in placement of sibling groups or where there is more than one (1) responsible adult in the home who can give full-time care to the children, **no** more than six (6) children, **shall reside in the family foster home. This number shall include** [~~including~~] the foster children and the foster parents' own children living at home [~~shall not reside in the family foster home~~]. The family services district manager shall approve exceptions for up to ten (10) children. Placement of more than ten (10) children including the foster parent's own children, shall be granted by the Director of Family Services.

2. More than three (3) infants including the foster children and foster parent's own children shall not be in the same home at the same time. Limitations on the number of special needs, medically fragile, or family treatment children who can be placed in a family foster home are specified in Section 11 of this administrative regulation.

(d) Employees of the department shall not be foster parents but may apply to adopt a child. An adoptive application shall not be processed in the office in which the applicant is employed or in an office served in an official capacity by the employee applicant. The employee may be referred to other licensed agencies.

(e) Applicants, including their children and other household members shall possess good mental and physical health and be free from communicable diseases, and specific illnesses or disabilities which interfere with the family's capability to care for children. An examination for the household members shall be completed by a physician, nurse clinician under the supervision of a physician, or a nurse practitioner within a year preceding the date of application is required. After approval, the worker may require a foster parent to supply documentation of their current health status, if a question arises about the foster parent's health.

1. A physical disability in a household member which does not interfere with the parents' ability to give adequate care to a child shall not prevent approval.

2. If a household member has received mental health services, he shall be asked to sign a medical release to obtain a report or evaluation regarding the emotional or mental health of that individual.

3. Adoption applicants shall inform the agency of their medical insurance carrier and the provisions of the carrier for including an adopted child on the policy. If the family does not have medical insurance coverage, they shall be advised of the risks involved and encouraged to provide coverage for their family. The family shall be informed of the agency's medical coverage for children in foster and adoptive placement.

(f) Applicants shall be expected to have an income sufficient to meet their present family's needs and to insure the stability of the family unit. Applicants who have children not in their custody shall provide copies of the child support decree.

(g) Applicants who are employed shall be required to have a plan for child care by the time of placement.

(h) **Except in those cases where foster parents accept children from the fiscal courts, foster parents shall only accept children for foster care from the Department for Social Services unless otherwise specified in a contract between DSS and another child care provider.** [~~Foster parents shall accept children for foster care from the Department for Social Services unless otherwise specified in a contract between DSS and another child care provider, except in those cases where foster parents accept children from the Fiscal Courts.~~]

(i) Foster parents shall not care for unrelated adults on a commercial basis or be licensed and accept children for day care at the same time they are approved as foster parents to provide twenty-four (24) hour care for children without the approval of the Director of Family Services.

(j) Home environment. The family shall have access to schools, recreation, churches, medical care and community facilities. If the home adjoins a place of business open to the public, consideration shall be given to the impact of the business upon the family and child. Factors including hours of operation, type of business and clientele shall be examined in terms of their potential impact. Physical standards of the home shall be of a degree of comfort sufficient to insure the well-being of the family.

1. The home shall have bedroom space to allow occupants sufficient living space.

2. More than four (4) children, including the foster parent's own children, **shall** [~~may~~] not share a bedroom.

3. Each child shall have a bed and each infant a crib but more than two (2) children **shall** [~~may~~] not share a bed.

4. If children sleep together, consideration shall be given to age, sex, and background.

5. It is desirable that adults not share a bedroom with a child. Exceptions may be approved for infants and toddlers by the district manager.

6. Children's bedrooms may generally be on the main floors of the house. Attic or basement bedrooms shall have adequate ventilation and be comparable to other living areas of the house.

7. Physical standards of the home shall not present hazards to the safety and health of a child and shall be well heated and ventilated.

8. Medications, alcoholic beverages, poisonous and cleaning materials shall be stored in cabinets inaccessible to small children.

9. Children's access to potentially dangerous animals shall be restricted.

10. Ammunition and firearms shall be stored in separate places.

11. First aid supplies shall be available and stored in a place easily accessible to adults.

12. A telephone or other means for immediate access to communication with the outside community shall be available.

13. The home shall be equipped with working smoke alarms within ten (10) feet of each bedroom. It is suggested that decals, indicating children in the home, be obtained from local fire departments.

(k) Marriage and family relationships.

1. Married applicants shall have been married for at least two (2) years prior to approval. An exception may be granted by the Family Services Office Supervisor for married applicants who have been married for more than a year but less than two (2) and whose relationship has been continuous and stable for at least a two (2) year period. The decision to foster or adopt shall be agreed to by members in the household, including children of appropriate age.

2. Previous divorces, deaths of spouses, and the present marriage shall be verified by a copy of marriage certificate, divorce judgments, or verifications of deaths.

3. Applicants who have children not in their custody shall provide copies of the visitation order.

4. A single **unmarried** person may apply to be a foster or adoptive parent. Single persons living together as spouses may not apply. An adult living in the family who may care for the child shall meet requirements, including attendance at the group preparation

meetings **as specified in Section 4(4) of this administrative regulation**

5. If an approved parent marries, the new spouse shall meet the same certification requirements and shall be approved as a foster or adoptive parent for the home to remain open. This preparation process shall normally be completed within six (6) months. Foster children may be placed in a foster family home if the preparation process has been initiated and if placement is determined to be in the best interest of the child.

(l) Applicants shall provide names of two (2) personal references one (1) of which shall be a neighbor, a present or former employer, adult children not living in the home and two (2) credit references. A telephone or personal interview shall be conducted with the neighbor, with the present or former employer if employed, and adult children not living in the home. After the receipt of the other references, which may be written, if there is a question as to the appropriateness of the applicants, a telephone or personal contact shall be made with the reference.

(m) Criminal record. Applicants and other adults, including adult children who live in their household, shall authorize the release of criminal records to the department by completing a DSS-216, Police Record Search, herein incorporated by reference.

1. The Central Office Children's Benefits Coordinator shall request record checks from the state police upon receipt of the completed DSS-216 and return completed checks to the worker to be filed in the applicant's case record. Reported criminal convictions shall result in contact with the court of jurisdiction for a complete history of the offense.

2. Central office staff shall check the child abuse and spouse abuse registry for previous allegations.

3. If the applicant has lived in another community or in another state, a request for records search of those locations shall be made prior to approval. Court records shall be checked for the disposition of an arrest record. With the exception of the state police, the worker shall contact the law enforcement agencies.

4. If there has been a conviction or fine on a charge other than minor traffic offenses, the applicant shall provide evidence of rehabilitation by submitting a statement from an appropriate justice agency attesting to the individual rehabilitation and a character reference from a person with good standing in the community, not a relative or close friend, and from the employer, who are aware of the conviction and who can attest to the person's behavior since the conviction.

5. Personal references shall be personally interviewed if the applicant or household member has been convicted of a crime.

6. If an applicant or member of the household has been convicted of a misdemeanor or felony, permission to proceed with the preparation process shall be given by the district manager.

(2) Applicants who are in the department's pool of families awaiting preparation for a nonspecial needs child may register with another agency. Applicants may remain registered with the other agency and request a special needs child from the department. Preparation for a special needs child shall begin immediately. If the applicant receives a child from another source, adopted or birth child, their request to the department shall not be considered for one (1) year from the time of placement or birth.

(3) Foster parent role expectations. Foster parents shall be informed of the following role expectations during the preparation process:

(a) To the child **foster parents shall**:

1. ~~[Foster parents shall]~~ Provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual and emotional development of the children in their home. Foster parents of children ages zero to six (6) are to provide appropriate opportunities for activities which stimulate the growth and development of the child.

2. ~~[Foster parents shall]~~ Assist the children to develop skills and to perform tasks which shall promote independence and the ability to care for themselves.

3. ~~[Foster parents shall]~~ Cooperate with the agency to help the children maintain an awareness of their past, a record of the present, and a plan for the future.

4. ~~[Foster parents shall]~~ Ask children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children.

5. ~~[Foster parents shall]~~ Provide well-balanced daily meals and are encouraged to eat together as a family. Foster parents shall have snacks available for children.

6. ~~[Foster parents shall]~~ Provide for special dietary needs of children placed in their home.

7. ~~[Foster parents shall]~~ Provide each child with their own clean, well-fitting, attractive and seasonal clothing appropriate to age, sex and individual needs, and comparable to the clothing of their own children and community standards. Foster parents shall include the children in the choosing of their own clothing if possible.

8. ~~[Foster parents shall]~~ Allow children to bring and acquire personal belongings. Foster parents shall send personal clothing and belongings with the children when they leave the family foster home.

9. ~~[Foster parents of adolescents shall]~~ Work with them to establish and enforce curfews.

10. ~~[Foster parents shall]~~ Not leave children under age fourteen (14) without responsible supervision. The department may require constant adult supervision of the developmentally disabled child over fourteen (14) as a part of the child's treatment plan.

11. ~~[Foster parents shall]~~ Cooperate with the agency in the medical and dental care planning for the child by scheduling appointments as needed and by being responsible for keeping immunizations current.

12. ~~[Foster parents shall]~~ Report to the department encounters with medical providers and corrective or follow-up medical or dental care the child needs.

13. ~~[Foster parents shall]~~ Be responsible for arranging transportation for children to necessary medical and dental appointments if possible.

14. ~~[Foster parents shall]~~ Give children prescribed medications only with a physician's prescription or authorization, and shall dispense the exact amount of medication prescribed for a child by a physician or dentist.

15. ~~[Foster parents shall]~~ Inform the agency within one (1) working day of a psychotropic medication prescribed for a child.

16. ~~[The foster family shall]~~ Treat personal information about a child and the child's family in a confidential manner.

17. ~~[Foster parents shall]~~ Provide an allowance for the child's discretionary spending at the rate set by the department in the foster home contract. Foster parents shall not make demands that allowance money be spent on family activities initiated by the foster parents.

18. ~~[Foster parents shall]~~ Encourage children to establish savings accounts.

19. ~~[Foster parents shall]~~ Not accept part of a child's earned or unearned income without prior, written agreement of the department and the child.

20. ~~[Foster parents shall]~~ Recognize, encourage and support the religious beliefs, ethnic heritage and language of a child and his family. Foster parents shall attempt to arrange transportation to religious services or ethnic events for a child whose beliefs and practices are different from their own. If this is not possible, or it is believed to be inappropriate then permission to exclude the child from these activities may be sought from the court.

21. ~~[Foster parents shall]~~ Not coerce children to participate in religious activities or ethnic events against their will or beliefs. If other approved child care arrangements are not available, the department may reimburse babysitting expenses for children who choose not to attend church with the foster parents because it is against their will or

beliefs.

22. [~~Foster parents shall~~] Enroll each child of school age in school within three (3) days of the placement of the child. Exceptions may be made by the Family Services Office Supervisor.

23. [~~Foster parents shall~~] Cooperate and shall take part with the department in the selection and arrangements for educational programs appropriate for the child's age, abilities and treatment plan.

24. [~~Foster parents shall~~] Plan with school personnel if there are problems with the child in school, but still report to the department serious situations which may require its involvement.

25. [~~Foster parents shall~~] Provide opportunities for recreational activities which are appropriate to the age and abilities of the child.

26. [~~Foster parents shall~~] Encourage children to take part in community services and activities both with the family and on their own.

(b) To the child's family **foster parents shall**:

1. [~~Foster parents shall~~] Present a positive image of the child's family to him.

2. [~~Foster parents shall~~] Be a supplement, but not a replacement, for the child's own parents.

3. [~~Foster parents shall~~] Demonstrate respect for the child's own family and shall agree to work with the child's family members as indicated in the case plan for out-of-home care.

4. [~~Foster parents shall~~] Participate in the development of the visitation agreement and allow children and their family members to visit and communicate in accordance with the visitation agreement.

5. Intercepting or reading incoming or outgoing mail of a child shall be prohibited.

(c) To the department **foster parents shall**:

1. [~~Foster parents shall~~] Cooperate in the ongoing monitoring of their homes and shall give the information required for the agency to verify compliance.

2. [~~Foster parents shall~~] Annually participate in a minimum of six (6) hours of training.

3. [~~Foster parents shall~~] Take part in planning for the children and shall cooperate in the preparation, preplacement and visitation plans for the children placed in their home.

4. [~~Foster parents shall~~] Be willing to work cooperatively with the agency staff as a team in the development and implementation of the case plan and participate in the case review for each child.

5. [~~Foster parents shall~~] Provide advance notice if possible to the agency regarding changes which affect the life and circumstances of the foster family.

6. [~~Foster parents shall~~] Notify the agency immediately of illness, accidents, or any unusual circumstances affecting the health, safety, physical or emotional well-being of the child.

7. [~~Foster parents shall~~] Maintain records in accordance with the agency procedure for the children placed with the family.

Section 3. Recruitment of Families. (1) Statewide recruitment efforts to find foster and adoptive families shall be the responsibility of recruitment and certification staff.

(2) Recruitment expenditures.

(a) Each district may spend up to $500 per quarter for expenses related to recruitment and parent training, except Jefferson and Bluegrass which may spend up to $1,000 per quarter. The major restriction on the use of these funds shall be printing costs which shall be provided by existing state government resources. Each district shall be responsible for monitoring expenditures related to recruitment and training.

(b) Expenditures in excess of $500 but less than $1,000 shall have three (3) informal bids with the lowest bidder receiving the contract after prior approval from central office.

(3) **Foster parents, who refer applicants who become approved foster parents, may be paid a fifty (50) dollar bonus.** [~~Foster parent recruitment bonus. If applicants who are approved as foster parents have named a current foster parent as their referral source, the referring foster parent may be paid a fifty (50) dollar bonus.~~] Families studied for a child already in their home shall not be eligible.

Section 4. Preparation and Selection of Families. (1) Family preparation shall be completed in group settings with other applicant families. Families who attend group preparation are not obligating themselves to accept a child, nor is the agency obligating itself to grant foster or adoptive home approval or placement of a child. Rare exceptions to group participation may be given by the director upon approval of an individualized training plan. Preparation sessions are scheduled at least quarterly in each district and prospective parents may be given the options of attending preparation group conducted in another county or district, or, waiting for the next group to begin in the local county. Applicants shall complete a minimum of eighteen (18) hours of preparation and may be given applications after the first preparation sessions.

(a) The goals of the group preparation shall be:

1. To orient the applicants to the philosophy and process of the department's adoption and family foster care programs;

2. To develop greater self-awareness on the part of the applicants to determine their strengths and needs;

3. To prepare applicants by sensitizing them to the kinds of situations, feelings, and reactions that are apt to occur with children;

4. To effect behavior so that applicants may better fulfill the function of their role as parents of an adopted child or foster children.

(b) The preparation process shall emphasize:

1. Self-evaluation through discussions;

2. Participation in small group exercises;

3. Discussions with experienced adoptive and foster parents.

(2) Inquirers shall be given a brief explanation about the need for families and shall be invited to attend an information meeting to learn about the department's adoption and family foster care programs.

(a) A "snap book" of waiting children shall be available in the local DSS offices.

(b) A listing of licensed child placing agencies may be offered to the inquirer.

(c) A worker shall not recommend independent adoption, but may explain the procedures for independent adoption pursuant to KRS 199.473.

(d) A worker shall not refer a family to an attorney or a physician or other intermediary for the purpose of arranging an independent adoption.

(e) Staff shall maintain information on those who inquire about foster or adoptive parenting, except for adoption inquiries for a nonspecial needs child which has a closed intake.

1. Foster parent inquiries shall be kept on a log.

2. A record of those inquiring about special needs adoption shall be kept on the DSS-1256, Adoption Intake Form, herein incorporated by reference.

(3) Requests for adoption preparation, called "SNAP Intake", shall be available for families who desire to adopt:

(a) White children aged ten (10) or over;

(b) Black or black and white children;

(c) Sibling groups of three (3) or more children;

(d) Severely emotionally disturbed or physically disabled children; or

(e) Educable, trainable, severely or profoundly mentally disabled children. This includes children with I.Q.'s of seventy (70) and below.

(4) Information meetings shall be scheduled monthly or at least quarterly in a convenient location for applicants. If the applicants are married, both husband and wife shall attend the information meeting. Families who sign a DSS-197, SNAP Intake Statement, incorporated herein, regarding adoption and those who express an interest in foster family care are invited to begin the preparation process. Applicants shall be informed at the information meeting of:

(a) Their right to request an administrative review if differences

arise which cannot be resolved through supervisory channels; and

(b) Their right to a fair hearing:

1. If the home is being closed; or

2. If placements into the home are being suspended.

(5) Family interviews shall be required and individual family member interviews may be scheduled if needed with one (1) family interview in the home.

(6) If the need for adoptive families for nonspecial needs children arises, central office staff shall identify applicants from the register of waiting families and notify local staff to begin the preparation process. Applicants moving out-of-state shall be removed from the register with the following exceptions:

(a) Kentucky inducted military families; and

(b) Families who are temporarily assigned out-of-state by their employer for a period not to exceed eighteen (18) months. (7) Applicants requesting a transracial placement shall attend a preparation session on adopting transracially.

(8) Withdrawal of applications:

(a) Applicants may voluntarily withdraw their application on their own initiative.

1. Applicants who voluntarily withdraw are given written notice confirming their decision by the supervisor within two (2) weeks.

2. Families who begin family preparation through SNAP and then decide not to consider a special needs child shall be considered to have voluntarily withdrawn.

(b) If it is determined that the applicants do not meet minimum requirements for foster or adoptive parents, a decision to recommend withdrawal may be initiated by the department. If the department recommends that the applicants withdraw:

1. The applicants shall be given written notice of the decision to recommend withdrawal of their application by the district manager within two (2) weeks of the decision.

2. If the applicants do not accept the reasons for the recommended withdrawal and refuse to withdraw their application, the worker and the supervisor shall hold a personal interview with the applicants to inform them of the department's recommendation and inform them of their right to request an administrative review.

3. Applicants are given written notice of the decision to withdraw their application by the district manager within two (2) weeks.

4. Home preparation shall cease when the decision is made to ask the applicants to withdraw.

(9) The foster or adoptive home narrative shall be completed based on a combination of information obtained in the preparation sessions and the family interviews.

(10) Approval.

(a) Applications are not considered complete until the applicants:

1. Complete and sign the application;

2. Complete the group preparation process; and

3. The required references and verifications are received.

(b) Upon completion of the application process, the worker submits for approval:

1. DSS-83, acceptance scale (adoption only);

2. DSS-122, family application;

3. Medical information;

4. Verification of marriage or divorce;

5. DSS-170, financial statement;

6. DSS-216, police record search and response;

7. DSS-104, foster parent I.D. (foster care only);

8. VS-26, verification of death (spouse);

9. Pictures;

10. Narrative;

11. Autobiographies;

12. Reference letters;

13. Approval letter; and

14. DSS-197, SNAP intake (adoption only).

(c) The family services district manager shall be required to approve or deny applicants with a misdemeanor conviction. The Director of Family Services shall be required to approve or deny applicants with a felony conviction or substantiated reports of either child or spouse abuse.

(d) Provisional approval may be granted only to families who have accepted placement of a committed child by order of the court and are requesting approval as foster parents. Prior to provisional approval being granted the following are required:

1. Family foster home applications;

2. Medical forms;

3. Contact with a minimum of two (2) references;

4. One (1) office interview and one (1) home visit; and

5. The applicants shall begin the preparation process within ninety (90) days of the court order or placement of the child.

(11) Adoptive families who are approved and waiting for a nonspecial needs child may be approved for placement of a special needs child and then reinstated to their original position on the register for a nonspecial needs child. To be approved for a special needs child, the following are required:

(a) Completion of the preparation process;

(b) SNAP intake statement, DSS-197;

(c) Update summarizing their preparation, interest in special needs children, and readiness for placement of a special needs child; and

(d) Approval of the district manager.

Section 5. Annual Foster Parent Training Requirement. (1) Both foster parents shall be required to participate in six (6) hours of annual training within one (1) year of approval or their most recent annual reevaluation.

(2) An individualized training plan may be developed for the foster parent who is unable to participate in group training because of employment or other circumstances and is reviewed for compliance during the annual reevaluation.

(3) The homes of foster parents who do not meet the training requirements shall be closed. The only exception shall be to families who have a child in their care who has developed a significant emotional attachment to the foster parents and whose best interests shall be served by preserving the placement. The approval of the district manager is required. Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) To assist foster parents in complying with the ongoing training requirements, the supervisor may approve babysitting for foster children and mileage. The supervisor may also approve tuition or fees in the amount of fifty (50) dollars per family per year or $100 per year for special needs, medically fragile or family treatment homes.

(5) Staff shall provide written notice of the foster parents' right to a fair hearing if the foster parents request to attend training provided or scheduled by the department is denied.

Section 6. Family Foster Home Annual Reevaluation. Personal interviews in the home with foster families and in the home or office with approved and waiting adoptive families are required annually during the anniversary month of the initial approval. Approved and waiting adoptive families whose updates are not current shall not be given consideration for children.

(1) Family foster home reevaluation:

(a) The worker, if necessary, updates the pictorial description file.

(b) Prior to completing the reevaluation, the worker reviews information in the family foster home record, including exit interviews and discusses areas of identified stress factors and concerns with the foster family. If the family has an individualized training plan, it is reviewed for compliance and plans are made for the family's continued compliance with the training requirement.

(c) The DSS-885, Foster Family Reevaluation and DSS-885A, Foster Child Supplement herein incorporated by reference are completed.

(d) A family who has never received a child or had a placement

by the fifth anniversary date shall no longer be considered as a placement resource.

(2) Adoption reevaluation:

(a) The worker updates information on approved and waiting adoptive families and also informs them of children currently waiting placement by sharing the SNAP Book.

(b) The family is given an opportunity to review and change their acceptance scale.

(c) Significant changes in the family i.e., income, health, marital status, etc. are noted in the narrative update which is approved by the supervisor.

(d) A family who has never received a child or had a placement by the fifth anniversary date shall no longer be considered as a placement resource. The worker may request an extension for families waiting for nonspecial needs children.

(3) If a family changes their address, the narrative section shall be updated in the record. For an adoptive family, a copy is submitted to the Central Office Adoption Specialist.

(4) If the family moves to a different area of the state, the worker notifies the appropriate supervisor prior to forwarding the record and if possible, the name and phone number of the new worker is provided to the family prior to the move.

Section 7. Foster or Adoptive Family Reviews. (1) The worker shall conduct a review within a month of notification if there are factors which may place unusual stress on the family or create a situation which may place a child at risk. Factors **may** include **the following** **[**~~, but are not limited to~~**]**:

(a) Death or disability of a family member;

(b) Change in marital status;

(c) Sudden substantial decrease in or loss of income;

(d) Childbirth;

(e) Both foster parents have reached the age of sixty-five (65); and

(f) Use of a prohibited form of punishment or a substantiated abuse or neglect report.

(2) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation which initiated the review;

(d) An evaluation of the family functioning to determine if the child's needs are met; and

(e) A plan for corrective action which may include a recommendation for closure of the home.

(3) If abuse or neglect or dependency is established or there is some indication, a review of the home shall be completed. The decision to close or continue using the home is made by the Family Services District Manager based on pertinent available information.

Section 8. Closing Approved Homes. (1) Families approved who have not received a placement within five (5) years shall be closed on the fifth anniversary of their approval date unless an indefinite extension is granted for adoptive families waiting for a nonspecial needs child. A home may be closed at the request of the foster or adoptive parent when:

(a) The recruitment and certification worker determines that the family does not meet the general requirements for foster or adoptive families; or

(b) If a situation exists that is not in the best interest of the child.

(c) If one (1) of the following occur, the home shall be closed:

(d) **[**~~(a)~~**]** Substantiated sexual abuse or exploitation by the foster or adoptive parents;

(e) **[**~~(b)~~**]** Substantiated physical abuse of a child or spouse serious in nature or warranting removal of the victim;

(f) **[**~~(c)~~**]** Presence of a serious physical or mental illness which may impair or preclude adequate care of the child by the parent.

(g) **[**~~(d)~~**]** Conviction of a felony offense by the parent.

(2) If closure is necessary for an adoptive family who has a child placed, but the adoption is not finalized, the worker and supervisor shall consult with the Family Services District Manager and the Office of Counsel regarding removal of the child from the home.

(3) A summary is written which contains:

(a) An evaluation of placements for a period of time not previously recorded;

(b) The reasons for closure;

(c) The reactions of the family to closure; and

(d) The family's potential appropriateness for parenting if they reapply.

(4) If it is necessary to close an approved home, the reasons are shared by the worker and supervisor in a personal interview with the family.

(5) Written notice confirming the decision to close a home shall be completed within two (2) weeks if the family requests closure, within thirty (30) days of the interview for adoptive parents and no later than ten (10) days prior to the closing for foster parents. The written notice shall include:

(a) Notice that the department shall no longer place foster children in the home;

(b) Notice that the contract between the department and the family foster home is terminated;

(c) The reasons for the family foster home being closed; and

(d) Notice of the foster parents right to appeal and the procedures for initiating an appeal.

Section 9. Reapplication. Former foster and adoptive families who were closed in good-standing with the department with no deficiencies may reapply. Adoptive parents who were closed following finalization of an adoption may also reapply. A family whose home was closed for specific problems or identified family issues may reapply following one (1) year. The issues or problems that led to the closure shall have been resolved.

(1) To reapply the foster and adoptive family shall:

(a) Attend an information meeting to become familiar with changes in policy and procedure;

(b) Attend group preparation, and exception may be made only for parents who have previously attended group and are considered excellent resources for children;

(c) Complete application forms, medical records, references and criminal records and registry checks.

(2) The worker shall complete an updated narrative.

Section 10. Foster Parent Adoption. (1) Foster parents may ask to adopt a child in their care, and may be considered when the child is legally available for adoption and if it is in the child's best interest. Approval of a foster parent's request to adopt a child in their care is the decision of the district manager.

(a) Foster parents shall attend a group or individual preparation session on adoption;

(b) The documentation for foster parent adoption is forwarded to the manager within three (3) months after foster parent adoption has been identified as the plan for the child and parental rights have been terminated.

(c) The application for adoption is initiated no later than one (1) month after the foster parent has indicated a desire to adopt a child who is available for adoption, unless the family has already been approved for adoption. If the application form has not been completed within the designated time period:

1. A conference is held with the foster parents, family worker, Family Services Office Supervisor, R & C Supervisor, R & C worker, and child, if appropriate, to discuss:

a. The reasons for delay; and

b. To develop plans to meet the permanency needs of the child; and

2. If the foster parents intend to proceed with the adoption, time

frames are established and monitored. Failure to adhere to the agreed upon time frame may result in a review by the Family Services District Manager and a decision made regarding the foster parent adoption.

(2) If the foster parents desire to adopt a foster child in their home, but the adoption cannot be recommended by the family services worker, R & C worker and supervisory staff shall:

(a) Submit a memorandum through channels to the manager summarizing the situation and stating the reasons for not recommending the adoption;

(b) The manager reviews the material, meets with appropriate staff and if necessary, consults with Office of Counsel regarding the facts of the case;

(c) If the manager agrees that the foster parent adoption cannot be approved, the worker informs the foster parent of the decision and of his right to request a conference to discuss his desire to adopt a foster child;

(d) If a formal family home application has been filed, the foster family shall be advised in writing of the decision by the manager; and

(e) The decision regarding the child's continued placement in the home shall be determined on an individual basis.

Section 11. Certification Requirements. (1) Relative foster homes.

(a) A relative may be approved as a family foster home for the placement of a specific child if it is in the best interest of the child and if the relative has met the same requirements as Section 2(1)(a)-(m) of this administrative regulation except:

1. An applicant who is between eighteen (18) to twenty-one (21) or over sixty-five (65) years of age may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the relative's age may not have a negative impact on the care of the child.

2. A relative applicant who has been married for less than one (1) year may be approved if it has been determined the relative can meet the needs of the child. The home narrative shall document that the length of the relative's marriage may not have a negative impact on the child.

3. A relative who has not completed group preparation requirements may be approved if they have an individualized training program.

(b) The Family Services District Manager shall be responsible for the approval of relative foster homes. Upon completion of the application process and family interviews, the worker submits the following for review prior to approval of the relative foster home by the district manager:

1. DSS-122, family application;
2. Medical Information or other medical report documentation;
3. Verification of marriage or divorce or other documentation;
4. Financial statement;
5. DSS-216, police record search and response;
6. Verification of death if applicable;
7. Narrative;
8. Autobiographies;
9. Reference letter; and
10. Approval letter.

(c) Relative foster homes are reevaluated annually or if a significant change occurs.

(2) Emergency shelter foster homes.

(a) Foster parents who care for children age twelve (12) and above, who are in need of immediate, unplanned placement for less than thirty (30) days and for whom no other appropriate resources are available, shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and, to be eligible for the emergency shelter rate shall meet the following requirements:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker;

2. Personal qualifications.

a. Commitment to and understanding of adolescents and reasons for applying as emergency shelter foster parents shall be carefully explored; and

b. Because of the increased demands, the foster parents health and stamina, in relation to their age, shall be considered;

3. Home environment.

a. A telephone is required for general safety; and

b. Alcohol and medications shall be kept in a locked cabinet; and

4. Both foster parents, or the foster parent primarily responsible for the care of the children, shall complete ten (10) hours of training beyond the eighteen (18) hours required in preservice. Completion of the ten (10) hour training requirement does not automatically grant approval for emergency shelter care.

(b) The Family Services District Manager shall be responsible for the initial approval of emergency shelter foster homes and notification to the family. The request for approval to the Family Services District Manager shall include:

1. An evaluation of the foster parent's participation in and knowledge gained from the training;

2. A statement that additional requirements for emergency shelter foster care have been met;

3. Social worker's assessment of the past history of care for children, experience and qualifications in relation to the type of child requested; and

4. An evaluation of strengths and weaknesses.

(c) To receive ongoing approval, the foster family shall:

1. Continue to meet the emergency shelter foster home certification requirements in paragraph (a)1-4 of this subsection.

2. Both foster parents, or the foster parent with primary responsibility for the child's care shall have participated in ten (10) hours of ongoing training over the past year.

(d) Failure to meet the ongoing training requirement ends the family's approval for the emergency shelter rate. The rate then reverts to the base rate and whatever incentives the family is eligible to receive, or if the foster parents have not met the six (6) hour requirement, the home is closed.

(3) Special needs foster homes.

(a) Foster parents who care for children with special needs shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and shall meet the following requirements to be eligible to receive the special needs training incentive:

1. Consideration shall be given to the child care plan if both foster parents are employed outside the home or if a single foster parent is employed outside the home. Flexibility of employment and resources to meet the increased responsibilities shall be documented.

2. The internal and external environment shall be adaptable to the specific needs of the child, i.e., ramps, doorways, etc.

3. Requirements of regular foster care apply and in addition:

a. A one (1) parent family foster home **shall** ~~[may]~~ not care for more than two (2) children with special needs, including the foster parent's own children;

b. A two (2) parent home **shall** ~~[may]~~ not care for more than three (3) children with special needs, including the foster parent's own children; and

c. An exception may be granted by the district manager.

4. Personal qualification.

a. The commitment to children with special needs and reasons for applying as special needs foster parents shall be explored; and

b. Because of increased demands, health and stamina in relation to age is a consideration.

5. Home environment.

a. There shall be an emergency exit on each floor or the potential to provide exit, if needed in case of fire;

b. Transportation and the ability to adapt transportation to accommodate special equipment safely shall be available;

c. The dispensing of life sustaining daily medications shall be documented on a log. If a child takes a prescribed medication, an

over the counter drug shall not be administered without the advice of a physician; and

d. A telephone is required for general safety.

6. Both foster parents or the foster parent primarily responsible for the child's care shall successfully complete twenty-four (24) hours of training beyond the eighteen (18) hours required in preservice but completion of the twenty-four (24) hours of training requirement does not automatically grant approval as a special needs foster home.

(b) The district manager shall be responsible for the approval of special needs foster homes. The request for approval to the district manager shall include an evaluation of the foster parents participation in and knowledge gained from training.

(c) Special needs foster families shall receive annual ongoing approval by the district manager during their annual reevaluation which shall indicate that the family foster home:

1. Continues to meet the special needs foster home certification requirements; and

2. Both foster parents, or the foster parent with primary responsibility for the child's care, shall meet one (1) of the following criteria:

a. Have participated in twelve (12) hours of training over the past year provided by the department or approved in advance by the R & C supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement:

(i) Planned meetings among special needs foster parents conducted by a social worker;

(ii) Participation in a retarded citizens or other association with an interest in special needs children;

(iii) Attendance at workshops or course work receiving prior approval of the supervisor; and

(iv) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor;

b. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for the special needs training incentive. The rate then reverts to the base rate and whatever incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement the home is closed.

(4) Medically fragile foster homes.

(a) Foster parents who care for medically fragile children shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and paragraphs (a)-(d) of this subsection to receive the medically fragile rate with the following exceptions:

1. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment shall be made by the Director of Family Services.

2. Number of children in the family.

a. A one (1) parent family foster home shall not care for more than one (1) medically fragile child, including the foster parent's own children, and shall demonstrate that support services are available and may be provided.

b. A two (2) parent home shall not care for more than two (2) medically fragile children, including the foster parent's own children.

c. An exception for number of children in the family may be approved by the Director of Family Services for a home that has a live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

3. Training.

a. Foster parents who provide care for medically fragile children shall meet the same requirement for initial approval as in special needs and shall have had training in the areas of:

(i) Growth and development;

(ii) Nutrition;

(iii) Medical disabilities;

(iv) Current certification in CPR; and

(v) Current certification in first aid.

b. Prior to the placement of a medically fragile child and the payment of the fragile rate, the foster parent shall be trained in the techniques of caring for the specific fragile child to be placed.

4. The home shall be within one (1) hour of a medical hospital with an emergency room and within thirty (30) minutes of a local medical facility.

(b) The district manager shall be responsible for the approval of medically fragile foster homes. The request for approval to the district manager shall include:

1. An evaluation of the foster parents training related to medically fragile;

2. Documentation that additional requirements for medically fragile have been met;

3. The worker's assessment of the past history of care for children, experience and qualifications in relation to the type child requested; and

4. Recommendations for approval, including an evaluation of strengths and weaknesses.

(c) Medically fragile foster families shall receive annual ongoing approval by the district manager during their annual reevaluation. To receive ongoing approval the family foster home shall continue to meet the medically fragile foster home certification requirements. Both foster parents shall maintain current certification in CPR and First Aid and meet one (1) of the following criteria:

1. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the Director of Family Services. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

a. Planned meetings among medically fragile foster parents conducted by a social worker;

b. Participation in an organization associated with or having an interest in medically fragile children;

c. Attendance at workshops or course work receiving prior approval of the Director of Family Services; and

d. Individualized professional training from the medical profession related to the individualized needs of the child.

2. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for the medically fragile rate. The rate then reverts to the special needs or base rate and incentives the family is eligible to receive or if the foster parents have not met the six (6) hour requirement, the home is closed. The Director of Family Services shall approve the continuing placement of a medically fragile child in a home if the training requirement has not been met.

(5) Family treatment homes.

(a) Foster parents who care for children who are determined to be appropriate for family treatment homes shall meet the requirements in Section 2(1)(a)-(m) of this administrative regulation and shall meet the following requirements to receive the family treatment home rate:

1. Number of children placed.

a. A one (1) parent family foster home shall not care for more than one (1) family treatment child, including the foster parent's own child, and shall demonstrate that support services are available and may be provided.

b. A two (2) parent home shall not care for more than two (2) family treatment children, including the foster parent's own children.

c. Regardless of the status of the family, more than four (4) children **shall** ~~[may]~~ not be placed in the home.

d. An exception for number of children in the family may be approved by the Director of Family Services for a home that has live-in or daily staff support and if it is determined that the particular needs of the children and the subsequent demands on the foster parent shall be met.

2. Both foster parents shall not be employed outside the home and one (1) shall be in the home as the responsible caretaker. An exception for employment may be made by the Director of Family Services.

3. Families shall have a respite care provider available who shall also complete family treatment training.

4. Prior to approval as a family treatment home, both foster parents shall complete the twenty-four (24) hour family treatment training.

5. Family treatment home parents shall maintain daily logs of the child's activities, behaviors and intervention techniques used.

6. One (1) family treatment home parent shall attend all treatment planning conferences. Family treatment home families may serve, at the discretion of the family services worker, as a role model for the child's family in order to help the family learn how to implement the remedial components of care and supervision developed for the child.

(b) The district manager shall be responsible for the approval of family treatment homes. The request for approval is submitted to the district manager and shall include:

1. Documentation that the family treatment home training has been completed;

2. Documentation that all additional requirements for family treatment home have been met;

3. The names, qualifications and training of the respite care providers;

4. The worker's assessment of the past history of care for children, experience and qualifications in relation to the type child requested; and

5. Recommendations for approval, including an evaluation of strengths and weaknesses.

(c) To receive ongoing approval, the annual reevaluation shall indicate that the family foster home:

1. Continues to meet the family treatment home certification requirements which shall include:

a. A review of the foster parent's intervention skills and techniques;

b. Recordkeeping; and

c. Training and ability in meeting the established goals and objectives for the children.

2. Foster parents shall meet one (1) of the following criteria:

a. Participation in twenty-four (24) hours of ongoing training over the past year provided by the department, the content of which is approved in advance by the R & C supervisor. The following may be used, hour-for-hour, to meet the ongoing training requirement of twenty-four (24) hours:

(i) Monthly planned meetings among family treatment home foster parents conducted by a social worker;

(ii) Attendance at workshops or course work receiving prior approval of the supervisor;

(iii) Individualized professional training in the field from which the child needs specialized care with prior approval of the supervisor; and

(iv) Except attendance at the child's treatment planning conference and other child specific activity does not meet the annual training requirement.

b. Qualification by ongoing practice in the field from which the child needs specialized care.

(d) Failure to meet the ongoing training requirement ends the family's approval for family treatment home. The rate then reverts to the base rate and whatever incentives the family is eligible to receive, or if the foster parents have not met the six (6) hours requirement the home is closed.

Section 12. Material Incorporated by Reference. (1) The forms necessary for the implementation of the family preparation section are being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: October 13, 1992
FILED WITH LRC: October 13, 1992 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

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

RELATES TO: KRS 224.43, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834

NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-834 requires the cabinet to establish the loan fund to make low interest loans available to private interests. Pursuant to KRS 224.43-010 it is the policy of the cabinet to encourage a regional approach to solid waste management. This regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Any person regularly engaged in a recycling or recovered material processing business, or if entering the field has made prior arrangements in the form of written commitments for supplies, equipment and personnel, or a facility permitted by the cabinet for incineration of waste tires for the recovery of energy may apply for financial assistance from the waste tire trust fund for any project that meets the criteria listed in KRS 224.50-834.

(2) The applicant shall possess the legal authority to construct or acquire, operate, and maintain the project for which loan assistance is sought from the waste tire trust fund.

(3) The applicant shall possess the legal authority to incur a pledge to repay any loan assistance.

(4) The project shall comply with goals and objectives of KRS 224.50-824 and 224.50-834.

(5) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(6) The applicant shall assure continued operation and maintenance of the project.

(7) The proposed source of revenue shall be sufficient to operate and repay any debt financing associated with the project.

(8) The applicant shall have approval by resolution from the local governing body as to its consistency with the approved area solid waste management plan.

(9) The applicant nor any of its key personnel nor any third party operator shall:

(a) Intentionally misrepresent or conceal any material fact in the application;

(b) Obtain or attempt to obtain the loan by misrepresentation or concealment;

(c) Have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; and

(d) Been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0042, entitled "Waste Tire Trust Fund Application for Loan Assistance" (October 1992) and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on the effective date of this regulation. The cabinet shall accept applications until COB June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program. These subsequent cycles shall be advertised in public notices, which shall be published in major newspapers with statewide circulation and distributed to all **county judge executives and mayors of first and second class cities,** [~~political subdivisions~~] as well as other parties who have notified the division of an interest in submitting an application.

(3) The application shall be properly completed and accurate.

Section 3. Criteria for Prioritizing Project Applications. [~~(1)~~] The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system that measures the degree to which the proposed project:

(1) [~~(a)~~] Promotes reuse and recycling efforts of waste tires or waste tire material; [~~, and~~]

(2) Eliminates existing and prevents future waste tire piles;

(3) [~~(b)~~] Satisfies the identified needs of the project service area;

(4) [~~(c)~~] Efficiently serves the area geographically and by population;

(5) [~~(d)~~] Is needed within the proposed service area;

(6) [~~(e)~~] Is a regional project; and

(7) [~~(f)~~] Is financially sound. The financial review shall be conducted to consider, but not be limited to, the following:

(a) [~~1.~~] Appropriateness of the type of revenues pledged for repayment of a loan and operation and maintenance cost of the project;

(b) [~~2.~~] Validity of the assumptions used to project any revenues pledged to the project;

(c) [~~3.~~] Assurance that revenues pledged to the project will be collected;

(d) [~~4.~~] Security of all other sources proposed to fund the project costs;

(e) [~~5.~~] Credit history of the applicant;

(f) [~~6.~~] Reasonableness of the projections for operation and maintenance cost of the project; and

(g) [~~7.~~] Any legal restrictions on the applicant to pledge the proposed revenues for repayment of a loan from the waste tire trust fund or operation and maintenance of the project.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a loan agreement with the cabinet that sets forth the terms and conditions for completion of the project, and actions thereafter. This shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the loan agreement is executed.

(2) All recipients of loans from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0042A, entitled "Waste Tire Trust Fund Loan Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste

Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m. Monday through Friday.

(3) The applicant shall be responsible for the repayment of any loan, and for the continued operation and maintenance of any facility or other project funded by the cabinet. If the project is to be operated, maintained or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment. Five (5) percent of the funds committed shall be reserved for this purpose until the funded projects are completed.

(5) Funds shall be released to the applicant on a monthly basis, for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project, funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) The applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility or until the final repayment of the loan, whichever is shorter.

(8) Any proposed change in the project or in the information provided in the original application, shall require prior approval of the cabinet. The cabinet may require approval by the local governing body.

(9) The interest rate shall be established in the loan agreement and shall be based on the index rate at the time of the loan less two (2) percent. The index rate is the average of the Bond Buyer's Index of twenty (20) G. O. Bonds as published weekly in the Bond Buyer (a financial newspaper circulated in New York) calculated based on the weeks following within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(10) Interest shall be payable to the cabinet semiannually beginning with the next successive interest payment date established in the loan agreement after the applicant receives funds.

(11) Principal shall be payable to the cabinet semiannually beginning with the next successive principal payment date established in the executed loan agreement. The total term of principal repayment shall not exceed thirty (30) years, or the useful life of the facilities and equipment financed, whichever comes first.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

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

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

RELATES TO: KRS 224.43, 224.50
STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834
NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-828 allows the cabinet to enter into agreements for the removal of existing waste tire piles, or for the removal of waste tires collected by the local government through a local community sponsored program. KRS 224.43-340 requires each county to be responsible for implementing the solid waste management plan which is required to include an inventory and description of all existing solid waste management facilities and activities, and identification and assessment of current and future solid waste management problems faced by the area. For this reason, grants should be awarded to the cities, counties, or urban-county governments to be used to implement a waste tire removal and control program pursuant to KRS 224.50-824 and 224.50-828. Pursuant to KRS 224.43-010, it is the policy of the cabinet to encourage a regional approach to solid waste management. This regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Eligible applicants for financial assistance from the waste tire trust fund grant program shall be any city, county or urban-county government.

(2) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(3) The applicant shall have an approved area solid waste management plan or be a part of an approved area solid waste management plan.

(4) The application shall be properly completed and accurate.

(5) If the project is to be performed by someone other than the applicant, that person shall not have been convicted by final judgement of any felony within five (5) years preceding the filing of the application; or been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

(6)(a) No more than seventy-five (75) percent of the cost of a project may be funded by a grant from the waste tire trust fund.

(b) Each applicant shall provide other funding equal to at least twenty-five (25) percent of the cost of a project which may consist of a local contribution, funds derived from grants or loans from other sources, or in-kind services, if the value of such services or property can be documented to the cabinet's satisfaction.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0043, entitled "Waste Tire Trust Fund Application for Grant Assistance" (October 1992) and its requirements are hereby incorporated by reference. Application forms may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. through 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2) The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on the effective date of this regulation. The cabinet shall accept applications until COB on June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program. These subsequent cycles shall be advertised in public notice, which shall be published in major newspapers with statewide circulation and distributed to all **county judge executives and mayors of first and second class cities,** [~~political subdivisions~~] as well as any other parties that have notified the division of an interest in submitting an application.

Section 3. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system which measures the degree

to which the proposed project:

(a) Addresses a significant environmental hazard;

(b) Assists owners of less than 500 waste tires with the cost of removal;

(c) Promotes reuse and recycling efforts of waste tires or waste tire materials;

(d) Complies with the goals and objectives of KRS 224.50-824 through 224.50-832;

(e) Efficiently serves the area geographically and by population;

(f) Is consistent with the objectives of the approved area solid waste management plan;

(g) Is needed within the proposed service area;

(h) Complies with the implementation schedule set forth in the area solid waste management plan;

(i) Is a regional project; and

(j) Is financially viable. The financial review shall consider, but not be limited to the following:

1. Validity of the assumptions used to project any revenues pledged to the project;

2. Assurance that revenues pledged to the project will be collected;

3. Security of all other sources proposed to fund the project costs; and

4. Reasonableness of the projections for operation and maintenance cost of the project.

(2) Projects that are proposed with the greatest percentage of matching funds shall receive a higher priority after the review of criteria in subsection (1) of this section.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a grant agreement with the cabinet that sets forth the terms and conditions for completion of the project and actions thereafter. The grant agreement shall include a pledge by the grant recipient to use revenues generated by the project to further the project or to support other activities consistent with the approved area solid waste management plan. No monies shall be released to the applicant until the grant agreement is executed.

(2) All recipients of grants from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0043A entitled, "Waste Tire Trust Fund Grant Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The applicant shall be responsible for the continued operation and maintenance of any facility or other project funded by the cabinet if applicable. If the project is to be operated, maintained, or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment.

(5) Funds shall be released to the applicant on a monthly basis for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) If applicable, the applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility.

PHILLIP J. SHEPHERD, Secretary

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, **40 CFR 81, November 6, 1991 Federal Register (56 FR 56694)**, 42 USC 7401-**7626, 7407, 7501-7515, 7601** [~~et seq.~~]

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7401-**7626** [~~et seq.~~]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state" as used in Sections 3 through 8 of this administrative regulation means the remainder of the state has been designated and identified on a county by county basis.

(2) "Statewide" as used in Sections 3 through 8 of this administrative regulation means the entire state has been designated on a county by county basis.

Section **2.** [~~1.~~] Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for sulfur dioxide, carbon monoxide, ozone and nitrogen oxides is listed in Sections 4 through 7 [~~Appendices B through E~~] of this administrative regulation. The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 3 [~~Appendix A~~] of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to **42 USC 7407(d)(1)** [~~Section 107(d)(1) of 42 USC 7401 et seq.~~] [~~the Clean Air Act.~~]

[~~(3) If the air quality status in Sections 3 through 7 [Appendices A through E] of this administrative regulation has been described by the generally inclusive term "Rest of State," that portion of the state so identified has been designated on a county by county basis. Similarly, the term "statewide" means the entire state has been designated on a county by county basis.~~]

Section **3.** [~~2.~~] Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section **4.** [~~3.~~] Attainment Status Designations for Total Suspended Particulates.

[~~APPENDIX A TO 401 KAR 51:010~~
~~ATTAINMENT STATUS DESIGNATIONS FOR~~
~~TOTAL SUSPENDED PARTICULATES~~]

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
Bell Co.			X	
Boyd Co.				X
That portion of Bullitt County [~~Co.~~] in Shepherdsville			X	
That portion of Campbell County [~~Co.~~] in Newport			X	
That portion of Daviess County [~~Co.~~] in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Beltline (KY 212) projected to the river on the east				X
That portion of Henderson County [~~Co.~~] in Henderson				X
Jefferson County				X
That portion of Lawrence County [~~Co.~~] in Louisa				X
McCracken County [~~Co.~~]			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County [~~Co.~~] in Hazard				X
That portion of Pike County [~~Co.~~] in Pikeville				X
That portion of Whitley County [~~Co.~~] in Corbin			X	
Rest of State				X

Section 5. [~~4.~~] Attainment Status Designations for Sulfur Dioxide.

[~~APPENDIX B TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR SULFUR DIOXIDE~~]

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

Section 6. [~~5.~~] Attainment Status Designations for Carbon Monoxide.

[~~APPENDIX C TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR CARBON MONOXIDE~~]

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X
Rest of State		X

Section 7. [~~6.~~] Attainment Status Designations for Ozone.

[~~APPENDIX D TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR OZONE~~]

Designated Area	Moderate [~~Does Not Meet Primary Standards~~]	Marginal [~~Better Than Standards~~]	Cannot be Classified or Better Than Standards
Boone County	X		
Boyd County	X		
That portion of Bullitt County within the boundaries described as follows: beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County line;			

proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 1020; proceeding north on Ky 1020 to the beginning. X [X]

Caldwell County			X
Calloway County			X
Campbell County	X		
Christian County		X	
Fayette County		[X]	X

That portion of Greenup County within the boundaries described as follows: Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; proceeding north and west along the East Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning. X

Jefferson County	X		
Kenton County	X		

That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and

KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of County Road 746 (the road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on County Road 746 to the junction with Dawkins Lane (also known as Saddlers Mill Road) and County Road 746; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest and then north-northwest on Massie School Road to the junction of KY 53 and Massie School Road; proceeding on KY 53 to the north-northwest to the junction of Moody Lane and KY 53; proceeding on Moody Lane to the south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning.	X		
Trigg County			X
Rest of State		[X]	X

Section 8. [~~7.~~] Attainment Status Designations for Nitrogen Oxides.

[~~APPENDIX E TO 401 KAR 51:010 ATTAINMENT STATUS DESIGNATIONS FOR NITROGEN OXIDES~~]

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

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

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 51, Subpart I, 51.165, 51.166(g), 52.21, 52.21(r), 60, 61, 81, Subpart D, 81.318, **June 28, 1989 Federal Register (54 FR 27274),** 42 USC 7401-**7626** **[~~et seq.~~]**, 7407(d)(1)(A)(i), (ii), and (iii), 7410 [~~224.20-100, 224.20-110, 224.20-120~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Definitions. As used in this administrative regulation, terms not defined shall have the meaning given them in 401 KAR 51:001 or, for terms relating to the protection of visibility, in 401 KAR 51:017.

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emission unit.

(c) For an emission unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area.

(3) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;

(b) Any other state and federally approved regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(4) "Begin actual construction" means initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(5) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., they have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, as incorporated by reference in Section 21 of 401 KAR 51:017.

(6) "Classification date" means September 22, 1982.

(7) "Commence" as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and has either:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of actual construction of the source to be completed within a reasonable time.

(8) "Construction" means a physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emission unit, which would result in a change in actual emissions.

(9) "Emission unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 USC 7401-**7626** **[~~et seq~~]**.

(10) "Federal land manager" means, with respect to lands in the United States, the secretary of the department with authority over those lands.

(11) **[~~(10)~~]** "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency (U.S. EPA), including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within an applicable State Implementation Plan, and a permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the State Implementation Plan, which expressly requires adherence to a permit issued under the program.

(12) **[~~(11)~~]** "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(13) **[~~(12)~~]** "Lowest achievable emissions rate" means, for a source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation contained in an implementation plan of a state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

(b) The most stringent emissions limitation achieved in practice by the class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. The application of this term shall not permit a

proposed new or modified stationary source to emit a pollutant in excess of the amount allowable under an applicable standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.

(14) [~~(13)~~] "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a pollutant subject to regulation under 42 USC 7401-**7626** [~~et seq~~].

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under a permit condition established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or

b. The source is approved to use under a permit issued under this administrative regulation;

5. An increase in hours of operation or in production rate, unless the change is prohibited under a permit condition that was established after December 21, 1976, pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.165; or

6. A change in ownership at a stationary source.

(15) [~~(14)~~] "Major stationary source" means:

(a) Except as provided in paragraph (b) of this subsection, a stationary source that emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 USC 7401-**7626** [~~et seq~~].

(b) For ozone nonattainment areas, a stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit the following:

1. For areas classified as serious, fifty (50) tons per year or more of volatile organic compounds (VOCs) or nitrogen oxides (NO_x);

2. For areas classified as severe, twenty-five (25) tons per year or more of VOCs or NO_x;

3. For areas classified as extreme, ten (10) tons per year or more of VOCs or NO_x.

(c) A physical change that would occur at a stationary source not qualifying under paragraph (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A source that is major for VOCs shall be considered major for ozone.

(16) [~~(15)~~] "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the Administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of the Interior, has determined visibility to be an important value.

(17) [~~(16)~~] "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(18) [~~(17)~~] "Necessary preconstruction approvals or permits" means the permits or approvals required under the regulations of Title 401, Chapters 50 to 63.

(19) [~~(18)~~] "Net emissions increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An increase in actual emissions from a particular physical change or changes in method of operation at a stationary source; and

(b) Another increase or decrease in actual emissions at the source that is contemporaneous with the particular change and is otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions shall be creditable only if the cabinet has not relied on it in issuing a permit for the source under this administrative regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions shall be creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions shall be creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;

3. The cabinet has not relied on it in issuing a permit or in demonstrating attainment or reasonable further progress; and

4. It has the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(20) [~~(19)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall not be counted in determining the potential to emit of a stationary source.

(21) [~~(20)~~] "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(22) [~~(21)~~] "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, and quantifiable, and shall impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility that would otherwise not be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(23) [~~(22)~~] "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant, a rate of emissions that would equal or exceed rates given in Section 12 of this administrative regulation.

(24) [~~(23)~~] "State Implementation Plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been submitted by the cabinet and approved by the U.S. EPA.

(25) [~~(24)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit an air pollutant subject to regulation under 42 USC 7401-7626 [~~et seq~~].

(26) [~~(25)~~] "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2. [~~1.~~] Applicability. (1) [~~The requirements of~~] This administrative regulation shall apply to new major sources or major modifications commenced after the classification date defined in Section 1(6) [~~(7)~~] of this administrative regulation [~~below~~] and that will locate in or impact upon an [~~any~~] area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act~~]. Area designations are contained in 40 CFR 81.318.

(2) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas which potentially have an impact on visibility in a [~~any~~] mandatory Class I federal area.

[~~Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010 or for terms relating to the protection of visibility, in 401 KAR 51:017.~~

~~(1) "Major stationary source" means:~~

~~(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or~~

~~(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.~~

~~(c) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.~~

~~(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.~~

~~(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.~~

~~(b) A physical change or change in the method of operation shall not include:~~

~~1. Routine maintenance, repair and replacement;~~

~~2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;~~

~~3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~4. Use of an alternative fuel or raw material by a stationary source which:~~

~~a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or~~

~~b. The source is approved to use under any permit issued under this regulation;~~

~~5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or~~

~~6. Any change in ownership at a stationary source.~~

~~(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:~~

~~(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and~~

~~(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.~~

~~(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.~~

~~(d) An increase or decrease in actual emissions is creditable only if the cabinet has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(f) A decrease in actual emissions is creditable only to the extent that:~~

~~1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;~~

~~2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;~~

~~3. The cabinet has not relied on it in issuing any permit or in demonstrating attainment or reasonable further progress; and~~

~~4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.~~

~~(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.~~

~~(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.~~

~~(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.~~

~~(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.~~

~~(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.~~

~~(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

~~(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:~~

~~(a) Begun, or caused to begin, a continuous program of actual on site construction of the source, to be completed within a reasonable time; or~~

~~(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner~~

~~or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.~~

~~(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.~~

~~(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, of hours or operation, or both) and the most stringent of the following:~~

~~(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;~~

~~(b) Any other state and federally approved regulatory emission limitations, including those with a future compliance date; or~~

~~(c) The emission rate specified as a state and federally enforceable permit condition, including those with a future compliance date.~~

~~(12) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.~~

~~(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.~~

~~(14) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) to (c) of this subsection.~~

~~(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~(b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emissions unit.~~

~~(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.~~

~~(15) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.~~

~~(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.~~

~~(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:~~

~~(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or~~

~~(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.~~

~~(18) "Classification date" means September 22, 1982.~~

~~(19) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.~~

~~(20) "Begin actual construction" means, in general, initiation of physical on site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on site activities other than preparatory activities which mark the initiation of the change.~~

~~(21) "Class I area" means the areas listed in paragraph (a) of this subsection. These areas may not be redesignated.~~

~~(a)1. International parks;~~

~~2. National wilderness areas and national memorial parks which exceed 5,000 acres in size; and~~

~~3. National parks which exceed 6,000 acres in size.~~

~~(b) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II but may be redesignated as provided in 40 CFR 51.24(g).~~

~~(22) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case by case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.~~

~~(23) "State Implementation Plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.~~

~~(24) "Mandatory Class I federal area" means any area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.~~

~~(25) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~(26) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.~~]

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The cabinet shall examine each proposed major new source and proposed major modification to determine if the [~~such~~] source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the cabinet shall determine whether the major stationary source or major modification would be constructed in an area designated as

nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act~~] for a pollutant for which the stationary source or modification is major. If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Sections 5 and 11 [~~10~~] of this administrative regulation shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) [~~any~~] of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination of fossil-fuel boilers [~~thereof~~]) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another [~~Any other~~] stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61.

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas pursuant to 42 USC 7407(d)(1)(A)(ii) or (iii) [~~Section 107(d)(1)(D) or (E) of the Clean Air Act~~] if the source or modification would cause impacts which exceed the significance levels specified in Section 13 [~~Appendix B~~] of this administrative regulation at a [~~any~~] locality that does not or would not meet the national ambient air quality standards.

(2) Sources to which this section applies shall [~~must~~] meet the requirements in Section 5(1), (2) and (4) of this administrative regulation. However, the [~~such~~] sources may be exempt from Section 5(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.

(4) For sources of NO_x [~~nitrogen oxides~~], the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 [~~nitrogen dioxide~~] by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs [~~volatile organic compounds (VOC)~~] locating outside a designated ozone nonattainment area shall [~~will~~] be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source shall [~~may~~] be permitted under the applicable provisions of this administrative regulation until the area is designated nonattainment pursuant to 42 USC 7407(d)(1)(A)(i). [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act. Once the area of source location has been redesignated to nonattainment status in 40 CFR 81.318, the provisions of Section 5(3) and (4) of this regulation as they relate to emissions of VOC shall not apply, provided the area is not also an urban county as defined in 401 KAR 50:010.~~]

(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if [~~both~~] the following conditions are met:

(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, so [~~such~~] that the new source will not cause a violation of a [~~any~~] national ambient air quality standard.

(b) The new emission limitations for the new and [~~source as well as any~~] existing sources affected shall [~~must~~] be state and federally enforceable in accordance with [~~the mechanisms set forth in~~] Section 7 of this administrative regulation.

Section 5. Conditions for Approval. [~~The provisions of~~] This section shall apply to new major stationary sources or major modifications which would be constructed in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B) or (C) of the Clean Air Act~~] for a pollutant for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for the [~~such~~] source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant (or an [~~any~~] entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky (Commonwealth) are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, and 40 CFR Parts 60 and 61 and 42 USC 7401-7626 [~~et seq.~~]. [~~the Clean Air Act~~], or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except in the case of VOCs or NO_x emissions from existing sources in the affected area of the proposed new major source or modification[~~s~~] (whether or not under the same ownership) shall be reduced (offset) so [~~such~~] that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emission reductions of VOCs or NO_x to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifica-

tions:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1;
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emission reductions shall [be such as to] provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling shall not be required [is not necessary] for VOCs [volatile organic compounds] and NO_x [oxides of nitrogen]. Except as provided in Section 4(5) of this administrative regulation, compliance with subsection (3) of this section and Section 6(7) of this administrative regulation shall [will] be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated nonattainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this administrative regulation shall specify that construction shall not commence until the U.S. EPA has approved the cabinet's plan relating to the requirements of Part D, Title I, of 42 USC 7401-7626 [et seq]. [the Clean Air Act.]

(6) [In nonattainment areas which have been granted an extension of the deadline to attain the primary national ambient air quality standard for ozone or carbon monoxide, pursuant to Section 172(a)(2) of the Clean Air Act,] The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the [such] proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 6. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets shall [will] be the emission limitations in effect at the time the application to construct or modify a source is filed. For areas where the demonstration of attainment for the State Implementation Plan was based on actual emissions, the baseline for determining offset credit shall be actual emissions. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis if [providing that] baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. If [Where] the cabinet requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. If [Where] the requirements of the cabinet do not contain an emission limitation for a source or source category, the emission offset baseline involving the source [such sources] shall be actual emissions determined under actual operating conditions for the previous two (2) year period. If [Where] the emission limitations required by the cabinet allow greater emissions than the uncontrolled emission rate of the source, emission offset credit shall [will] be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source shall [will] be the allowable emissions under the emission limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, a [any] resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved shall not be [is not] acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction if the source switches [should the source switch] back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if [provided that] the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. **However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.** [However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.]

(4) Credit for hydrocarbon substitution. No emission offset credit shall [may] be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after the effective date of this administrative regulation [January 16, 1979] may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation [reasonable progress toward attainment for future use]. An owner or operator of an existing source that reduces its own emissions may bank a [any] resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in 42 USC 7401-**7626** [et seq]. [the Clean Air Act] as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy.

(6) Offset credit for meeting NSPS or NESHAPS. If [Where] a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Offsets. The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this section for increased emissions of an air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, except that the cabinet may allow the owner or operator of a source to obtain the emission reductions in another nonattainment area if:

(a) The other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. [Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained only within the same air quality control region, as defined in 401 KAR 50:020 in which the source is to be located. For sulfur dioxide, particulate matter and carbon monoxide, the cabinet shall

~~require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving stack emissions of VOC, offsetting emissions may be obtained and used as follows:~~

~~(a) For a source in an urban county designated nonattainment for ozone in 401 KAR 51:010, VOC emission offsets shall only be available for use when created by sources located in counties within the same urban nonattainment area.~~

~~(b) For a source not subject to paragraph (a) of this subsection, VOC emission offsets shall be available for use when created by sources located within fifty (50) kilometers of the intended user.~~]

Section 7. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or by the cabinet. The emission reduction shall [~~committed to must~~] be enforceable by the cabinet and the U.S. EPA [~~state and federally enforceable by the cabinet~~], and shall [~~must~~] be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth [~~of Kentucky~~] for a new source to be located in the Commonwealth, the emission reductions shall [~~committed to must~~] be [~~state and federally~~] enforceable by the neighboring state [~~and/~~]or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner [~~and/~~]or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) [~~and/~~]or reductions from other sources (external emission offsets), if the emission offsets meet the requirements of this section and Section 5(3) of this administrative regulation. [~~As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable.~~] An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset shall [~~will~~] not be accepted unless the affected source[~~(s)~~] is subject to a new emission limitation requirement of the cabinet to ensure that its emissions shall [~~will~~] be reduced by a specified amount in a specified time. The form of the new emission limitation shall [~~may~~] be enforceable by the cabinet and by the U.S. EPA [~~a cabinet regulation, operating permit condition, or consent or enforcement order~~].

(2) Cabinet initiated emission offsets. The cabinet may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source [~~so as~~] to accommodate the proposed new source. The commitment shall [~~must~~] be reflected in the emission limitation requirements of the cabinet for the new and existing sources as required by this section.

Section 8. Source Obligation. (1) An [~~Any~~] owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to Sections 4 and 5 of this administrative regulation or with the terms of an [~~any~~] approval to construct or an [~~any~~] owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982 without applying for and receiving approval according to the requirements of this section [~~hereunder,~~] shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the [~~such~~] approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve an [~~any~~] owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At the [~~such~~] time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in a [~~any~~] state and federally enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 9. Permit Condition Rescission. (1) An [~~Any~~] owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the permit condition.

(2) The cabinet shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or a portion thereof if construction would have commenced after September 22, 1982, and if the owner or operator demonstrates that the [~~such~~] rescission would not violate the requirements of Sections 5(3) and 8 of this administrative regulation [~~interfere with reasonable further progress~~].

Section 10. Class I Areas. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Another area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 CFR 51.166(g), as published in the Code of Federal Regulations, Title 40, July 1, 1991.

(3) The visibility protection requirements of this section and Section 11 of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 11. [~~10.~~] Protection of Visibility. (1) New source review - applicability and exemptions.

(a) No stationary source or modification to which [~~the requirements of~~] this section applies [~~apply~~] shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(b) [~~The requirements of~~] This section shall apply to construction of a [~~any~~] new major stationary source or major modification that would both be constructed in an area designated [~~classified~~] as nonattainment under 42 USC 7407(d)(1)(A)(i) [~~Section 107(d)(1)(A), (B), or (C) of the Clean Air Act~~] and potentially have [~~has~~] an impact on visibility in a [~~any~~] Class I area.

(c) [~~The requirements of~~] This section shall apply to a [~~any such~~] major stationary source or [~~and any such~~] major modification for [~~with respect to~~] each pollutant subject to regulation under the 42 USC 7401-**7626** [~~et seq.~~]. [~~Clean Air Act~~] that it would emit, except as provided in paragraphs (d) and (e) of this subsection [~~this section otherwise provides~~].

(d) [~~The requirements of~~] This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification would be a nonprofit health or

nonprofit educational institution, or a major modification would occur at the [~~such an~~] institution, and the Governor of the Commonwealth [~~of Kentucky~~] requests that it be exempt from those requirements.

2. The source is a portable stationary source which has previously received a permit under this section; and:

a. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The [~~Such~~] notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) [~~The requirements of~~] This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of the Class I [~~such~~] lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on these [~~such~~] values.

(b) The cabinet shall provide written notification to all affected federal land managers of a [~~any~~] permit application for a [~~any~~] proposed new major stationary source or major modification that may affect visibility in a [~~any~~] Class I area. The cabinet shall also provide the [~~such~~] notification to the federal official charged with direct responsibility for management of [~~any~~] lands within the Class I [~~any such~~] area. The [~~Such~~] notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to a [~~any~~] public hearing on the application for a permit to construct. The [~~Such~~] notification shall include an analysis of the proposed source's anticipated impacts on visibility in a [~~any~~] Class I area. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an [~~any~~] advance notification of the [~~any such~~] permit application.

(c) The cabinet shall consider an [~~any~~] analysis performed by the federal land manager provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the [~~such~~] proposed new major stationary source or major modification may have an adverse impact on visibility in a [~~any~~] Class I area. If [~~Where~~] the cabinet finds that the [~~such an~~] analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to **paragraph (c) of this subsection** [~~Section 10 (3)(c) of this administrative regulation~~] shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this section. The cabinet shall follow the procedures at 40 CFR 52.21(r) as in effect on August 7, 1980, to the extent that the procedures of 401 KAR 50:035 do not apply.

(5) National visibility goal. The cabinet shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing [~~any~~] future, and remedying [~~any~~] existing, impairment of visibility in Class I areas which impairment results from manmade air pollution. In making the decision to issue a permit the cabinet may take into account the overriding factors of the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(6) Monitoring. The cabinet may require monitoring of visibility in a [~~any~~] Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. The cabinet shall not undertake [~~Any~~] visibility monitoring [~~required by the cabinet~~] in a Class I area without the approval of [~~will be approved by~~] the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 12. Significant Pollutant and Emission Rate. For this administrative regulation, the following pollutant and emission rates shall be considered significant.

[~~APPENDIX A TO 401 KAR 51:052~~
~~Significant Pollutant and Emissions Rate~~]

Carbon monoxide:	100 per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

Section 13. Significant Levels of Air Quality Impact. For this administrative regulation, the following levels of air quality impact shall be considered significant.

[~~APPENDIX B TO 401 KAR 51:052~~
~~Significant Levels of Air Quality Impact~~]

	Annual	Averaging Time			
Pollutant	Average	24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon Monoxide	--	--	0.5mg/m^3	--	2mg/m^3

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:175. New service stations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401-**7626** [~~et seq~~]., 7407, 7408, 7410 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from new service stations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated nonattainment for ozone according to 401 KAR 51:010 which commenced on or after the classification date defined below.~~]

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 59:001 [~~50:010~~].

(1) "Affected facility" means the gasoline storage tanks at a service station.

(2) "Classification date" means June 6, 1979.

(3) "Service station" means a [~~any~~] public or private establishment which dispenses gasoline into vehicle fuel tanks.

(4) "Submerged fill pipe" means a [~~any~~] fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a [~~any~~] fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.

(6) "Vent line restriction" means:

(a) An orifice of one-half (1/2) to three-quarters (3/4) inch inside diameter;

(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (1/2) oz. per square inch vacuum unless a different vacuum relief setting is required by safety or fire authorities; or

(c) A vent shutoff valve which is activated by connection of the vapor return hose.

[~~(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.~~]

Section 2. Applicability. This administrative regulation shall apply to each affected facility commenced on or after the classification date defined in Section 1 of this administrative regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system [~~with an interlocking system~~] and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the cabinet.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends to within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the cabinet's satisfaction to achieve an equivalent control efficiency.

(3) The owner or operator shall not allow any transport vehicle to deliver fuel to an affected facility until the transport vehicle is properly connected to the vapor balance system or alternate control system.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on December 3, 1980, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility which becomes subject to this administrative regulation because it is located in a county or portion of a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, shall comply with this administrative regulation in the following manner:

(a) Facilities constructed prior to November 15, 1990, with monthly throughput of 100,000 gallons or more of gasoline shall comply within one (1) year of the effective date of this administrative regulation.

(b) Facilities constructed prior to November 15, 1990, with a monthly throughput between 10,000 and 100,000 gallons, shall comply within two (2) years of the effective date of this administrative regulation.

(c) Facilities constructed on or after November 15, 1990, but on or before the effective date of this administrative regulation, shall comply within six (6) months of the effective date of this administrative regulation.

(d) Facilities commencing after the effective date of this administrative regulation shall comply with this administrative regulation.

(e) Facilities shall be considered to comply with the time requirements of paragraphs (a) through (d) of this subsection if the temporary operating permit authorized in Section 8(3) of 401 KAR 63:035 goes into effect by the date of compliance.

Section 5. [~~4.~~] Exemptions. An [~~Any~~] affected facility shall be exempt from the provisions of Section 3 of this administrative regulation if the **annual** [~~monthly~~] [~~annual~~] throughput is less than or equal to **120,000 gal** [~~10,000 gallons per month~~] [~~120,000 gal~~].

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:430. Standards of performance for industrial-commercial-institutional steam generating units.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart Db, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the

Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from new steam generating units. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from industrial, commercial, and institutional steam generating units is governed by 40 CFR 60, Subpart Db, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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401 KAR 59:460. Standards of performance for sulfuric acid plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120., 40 CFR Part 60, Subpart H, 42 USC **7411** [~~7401 et seq.~~]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:036 which provides for the control of emissions from new sulfuric acid manufacturing plants. 401 KAR 59:036 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1.The standards of performance for new sulfuric acid manufacturing plants is governed by 40 CFR 60, Subpart H, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction or modification after August 17, 1971.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~public review~~] at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:036, New sulfuric acid manufacturing plants, is hereby repealed.

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

401 KAR 59:635. Standards of performance for the graphic arts industry: publication rotogravure printing.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart QQ, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:213 which provides for the control of emissions from new publication rotogravure printing operations in the graphic arts industry. 401 KAR 59:213 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic compound (VOC) emissions from new publication rotogravure printing presses is governed by 40 CFR 60, Subpart QQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after October 28,1980.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~public review~~] at the following offices of the Division for Air Quality:

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

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

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

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

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

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

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:213, New publication rotogravure printing operations, is hereby repealed.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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401 KAR 59:705. Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart III, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) which utilizes the air oxidation unit processes. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) using the air oxidation unit processes is governed by 40 CFR 60, Subpart III, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after October 21, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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401 KAR 59:725. Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart NNN, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) which utilizes distillation operations. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations is governed by 40 CFR 60, Subpart NNN, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after December 30, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

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

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart QQQ, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of VOC emissions from petroleum refinery wastewater systems. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for VOC emissions from petroleum refinery wastewater systems is governed by 40 CFR 60, Subpart QQQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to affected facilities located in petroleum refineries that commences construction, modification, or reconstruction after May 4, 1987.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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401 KAR 59:745. Standards of performance for new magnetic tape coating facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart SSS, 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from magnetic tape coating facilities. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from magnetic tape coating facilities is governed by 40 CFR 60, Subpart SSS, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after January 22, 1986.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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401 KAR 59:750. Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart TTT, 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from industrial facilities which surface coat plastic parts for business machines. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for emissions from industrial facilities which surface coat plastic parts for business machines is governed by 40 CFR 60, Subpart TTT, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after January 8, 1986.

Section 3. Availability of information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~public review~~] at the following offices of the Division for Air Quality:
(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;
(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;
(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;
(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and
(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 10, 1992
FILED WITH LRC: December 10, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

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

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 60, Subpart VVV, 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from polymeric coating of supporting substrates facilities. Delegation of implementation and enforcement authority for the federal new source performance standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under USC 7411(c)(1).

Section 1. The standards of performance for emissions from polymeric coating of supporting substrates facilities is governed by 40 CFR 60, Subpart VVV, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1991. **Except for those authorities reserved in a new source performance standard for the administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "administrator" and "EPA" as used in the federal new source performance standard shall mean cabinet.** [~~As used in the federal NSPS regulation, Regional Administrator and EPA shall be read as cabinet.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility that commences construction, modification, or reconstruction after April 30, 1987.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for **inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday** [~~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
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PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 61:085. Existing service stations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401-**7626** [~~et seq.~~], 7407, 7408, 7410 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from existing service stations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated nonattainment for ozone according to 401 KAR 51:010 which commenced before the classification date defined below.~~]

Section 1. [~~2.~~] Definitions. As used in this administrative regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 61:001 [~~50:010~~].

(1) "Affected facility" means the gasoline storage tanks at a service station.
(2) "Classification date" means June 6, 1979.
(3) "Service station" means a [~~any~~] public or private establishment except farms which dispenses gasoline into vehicle fuel tanks.
(4) "Submerged fill pipe" means a [~~any~~] fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a [~~any~~] fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.
(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.
(6) "Vent line restriction" means:
(a) An orifice of one-half (1/2) to three-quarters (3/4) inch inside diameter;
(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (1/2) oz. per square inch vacuum unless a different vacuum relief setting is required by safety or fire authorities; or
(c) A vent shutoff valve which is activated by connection of the vapor return hose.

[~~(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.~~]

Section 2. Applicability. This administrative regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this administrative regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system [~~with an interlocking system~~] and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the cabinet.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the cabinet's satisfaction to achieve an equivalent control efficiency.

(3) The owner or operator shall not allow any transport vehicle to deliver fuel to an affected facility until the transport vehicle is properly connected to the vapor balance system or alternate control system.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this administrative regulation as in effect on December 3, 1980, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility which becomes subject to this administrative regulation because it is located in a county or portion of a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, shall comply with this administrative regulation in the following manner;

(a) Facilities with monthly throughput of 100,000 gallons or more of gasoline shall comply within one (1) year of the effective date of this administrative regulation.

(b) Facilities with a monthly throughput between 10,000 and 100,000 gallons, shall comply within two (2) years of the effective date of this administrative regulation.

(c) Facilities shall be considered to comply with the time requirements of paragraphs (a) and (b) of this subsection if the temporary operating permit authorized in Section 8(3) of 401 KAR 63:035 goes into effect by the date of compliance. [~~The owner or operator of an affected facility with an annual throughput greater than or equal to 250,000 gal. shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~

~~(b) Award the control device contract no later than November 1, 1979.~~

~~(c) Initiate on site construction or installation of emission control equipment no later than April 1, 1980.~~

~~(d) On site construction or installation of emission control equipment shall be completed no later than November 1, 1980.~~

~~(e) Final compliance shall be achieved no later than February 1, 1981.~~

~~(2) The owner or operator of an affected facility with an annual throughput of less than 250,000 gal. shall be required to complete the following:~~

~~(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.~~

~~(b) Award the control device contract no later than November 1, 1980.~~

~~(c) Initiate on site construction or installation of emission control equipment no later than April 1, 1981.~~

~~(d) On site construction or installation of emission control equipment shall be completed no later than November 1, 1981.~~

~~(e) Final compliance shall be achieved no later than February 1, 1982.~~

Section 5. Exemptions. An [~~Any~~] affected facility shall be exempt from the provisions of Section 3 of this administrative regulation if the **annual** [~~monthly~~] [~~annual~~] throughput is less than or equal to **120,000 gal** [~~10,000 per month~~]. [~~120,000 gal.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 10, 1992
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EDUCATION PROFESSIONAL STANDARDS BOARD
Office of Teacher Education and Certification
(Amended After Hearing)

704 KAR 20:585. Procedures for certificate revocation.

RELATES TO: KRS 161.028, 161.120
STATUTORY AUTHORITY: KRS 161.028
NECESSITY AND FUNCTION: KRS 161.028 and 161.120 provides that the Education Professional Standards Board may suspend or revoke teaching certificates. This **administrative** regulation identifies the conditions for initiating revocation proceedings and the procedures to be followed during the revocation proceedings, including the rules governing the conduct of the adjudicatory hearing.

Section 1. (1) In addition to those grounds provided in KRS 161.120, an action to revoke or suspend any Kentucky certificate may be initiated by the **Education Professional Standards Board** ("board") upon receipt of one (1) or more of the following:

(a) Report of criminal prosecution for persons who are not employed in a public or private school position but who hold a Kentucky teaching certificate.

(b) Report of certificate revocation or suspension from another state.

(c) Report received from a **local** district superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380.

(d) Report from the chief state school officer or a local board of education of the conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).

(2) Failure to report by the district superintendent as required by KRS 161.120(2)(b) may constitute grounds for revocation of the superintendent's certificate.

Section 2. Revocation proceedings shall be automatically initiated on receipt of a report on a certificate holder under the following conditions:

(1) Conviction of a felony.

(2) Conviction on any charge involving sexual misconduct.

(3) Conviction on any charge involving child abuse.

(4) Conviction on any misdemeanor where a student is involved.

(5) Providing false information on a certificate application which affects the eligibility of the applicant for a Kentucky certificate and/or forged transcripts of credits.

(6) Termination, suspension, resignation or retirement for cause on grounds of willful neglect of duty, misconduct in office, or immorality.

(7) Revocation, suspension or denial of a certificate by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Kentucky.

(8) Admission of criminal conduct, such as that exemplified in plea bargaining. For purposes of this subsection, criminal conduct shall not mean actions in the nature of minor traffic violations, alcohol related misdemeanor convictions where no student or school related activity is involved or other conduct of similar nature.

Section **3. Investigation, Determination of Probable Cause.** [~~2.~~] (1) Upon receiving a report as identified in Section 1 of this administrative regulation or KRS 161.120(2)(b), the board through the office of its executive secretary shall secure available documentation and information and cause an investigation relating to the cause for certificate revocation **to be conducted**.

(2) The board, or its designee, shall make the determination that the report does or does not warrant a hearing for certificate revocation. In making this determination, the board or its designee shall take into consideration the conditions outlined in Section 3 of this administrative regulation.

(3) The designee of the board to make the determination of whether a report does or does not warrant a hearing for certificate revocation shall be composed of three (3) members, as follows:

(a) The Associate Commissioner of the Office of Teacher Education and Certification;

(b) The Director of the Division of Teacher Certification; and

(c) A certified teacher appointed by the board. These persons shall serve on a committee styled the Probable Cause Screening Committee ("committee") and shall meet on a periodic basis to consider pending revocation cases. The committee shall submit a written recommendation to the board for each case considered on the issue of whether a hearing for certificate revocation is or is not warranted. The board shall consider the written recommendations of the committee and shall have discretion to accept or reject the recommendations.

(4)(a) [~~(3)~~] If the board [~~or its designee~~] determines that a hearing is not warranted, written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint.

(b) If the board determines that a hearing is warranted, written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint. The notice provided for under this section shall not be construed as board action to initiate hearing proceedings or as the statement of charges or notice of hearing required by KRS 161.120(3)(a) or subsection (5)(a) of this section.

(5) [~~(4)~~](a) Statement of charges and notice of hearing. **Upon taking action to initiate hearing proceedings to revoke a certificate, the board shall provide the certificate holder with** [~~If the board or its designee determines that a hearing is warranted,~~] a written statement specifying in detail the charge(s) against the certificate holder and setting a time and date for the hearing **pursuant to KRS 161.120(3)(a). This notice** shall be forwarded to the certificate holder **and the complainant** by certified mail.

(b) The written statement of charges against the certificate holder shall set forth in ordinary and concise language the act(s) or omission(s) with which the certificate holder is charged to the end that the certificate holder will be able to prepare a defense.

1. The statement shall also notify the certificate holder of the date, time and location of the hearing. **The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certificate holder receives the statement of charges.** [~~, and the name and address of the hearing officer if one has been appointed to hear the case.~~]

2. The statement of charge(s) shall include or be accompanied by:

a. [~~1.~~] A copy of KRS 161.120;

b. [~~2.~~] 704 KAR 20:585;

c. [~~3.~~] A statement that a failure to appear at the hearing, in person or by counsel, **shall** [~~will~~] constitute a waiver of the right to a hearing and that the hearing officer or [~~full~~] board may proceed upon the charge(s) without a hearing and in the absence of the certificate holder; and

d. [~~4.~~] A statement that the certificate may be revoked **or suspended** without a hearing upon written agreement by the certificate holder to voluntarily surrender his certificate(s).

(6) [~~(5)~~] Service. The written statement of charges shall be served personally or by certified mail. Service by certified mail shall be effective if a statute or administrative regulation requires the certificate holder **with a revocation complaint pending before the board** to file his **current** address with the board and to notify the board of any change in address, and if a certified letter containing the statement of charge(s) is mailed, addressed to the certificate holder at the latest address on file with the board.

(7) [~~(6)~~] Amendment of charges. At any time before the matter is submitted for final decision, the statement of charge(s) may be amended or supplemented. All parties shall be notified of the filing of an amended or supplemental charge(s). If the amended or supplemental statement of charge(s) presents new charges, the certificate holder shall be afforded a reasonable opportunity not **less than** [~~exceeding~~] thirty (30) days to prepare his defense. Any new charges shall be deemed controverted and any objections to the amended or supplemental charges **shall be in writing** [~~may be made orally~~] and shall be noted in the record.

(8) The hearing shall be conducted pursuant to KRS 161.120(3)(a). [~~(7) The hearing shall be conducted by a quorum of the board or by a hearing officer appointed by the board.~~]

(9) [~~(8)(a) If the matter is to be heard by the board,~~] The executive secretary of the board shall determine the date, time and place of the hearing **pursuant to KRS 161.120(3)(a)**. [~~When hearing officer is appointed to hear the case, the hearing officer shall determine the date, time and place of the hearing.~~] Unless otherwise ordered or agreed, the hearing shall be held at the Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

[~~(b) Notwithstanding paragraph (a) of this subsection, if the matter is to be heard by the hearing officer, the hearing officer may select a different location for the hearing nearer the place where the event complained of occurred. The parties by agreement may select any location within the state for the hearing.~~]

Section **4.** [~~3.~~] Notice Returned or Undeliverable. If the notice of charges and hearing date is returned as undeliverable and the board is otherwise unable to serve the notice of charges and hearing date on the certificate holder, the charges supporting the revocation proceeding shall not be dismissed. The fact of the pending revocation proceeding and the supporting charges shall be noted in the certificate holder's certification record on file with the Office of Teacher Education and Certification and shall be communicated to all Kentucky school superintendents, to all state directors of teacher education and certification and to the NASDTEC-CAA Clearinghouse operated by the National Association of State Directors of Teacher Education and Certification.

Section **5.** [~~4.~~] Continuances. (1) A certificate holder may request a continuance of the scheduled revocation hearing for good cause **shown**. The request shall be in writing and shall state the reason for the continuance. The request shall be filed with the board, through the

office of the executive secretary, at least ten (10) days prior to the scheduled hearing. Copies of the request for continuance shall be mailed to all parties **by the certificate holder. The executive secretary shall forward a copy of the request for continuance to the hearing officer.** [~~, including the hearing officer appointed by the board, if any.~~]

(2) An objection to a requested continuance shall be filed in writing and shall state the reason for the objection. Any objection shall be filed with the board, through the office of the executive secretary, at least five (5) days prior to the scheduled hearing. Copies of the objection to request for continuance shall be mailed to all parties, including the hearing officer appointed by the board, if any.

(3) A continuance may be granted **for good cause shown** [~~in extraordinary circumstances~~].

(4)(a) If the scheduled revocation hearing is to be heard before a hearing officer appointed by the board, the request for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive secretary shall **sign** [~~execute~~] and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally **until further orders**.

(b) If the scheduled revocation hearing is to be conducted by the board, the request for continuance shall be ruled on by the executive secretary of the board.

Section **6.** [~~5.~~] Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive secretary, and served on all parties**. The executive secretary shall forward copies of motions, requests or filings to the hearing officer.** [~~, including the hearing officer appointed by the board, if any.~~]

(2) An interim order by the hearing officer shall be **signed** [~~executed~~] and transmitted by the executive secretary to all parties **upon the direction of the hearing officer**. Interim orders **shall** [~~are~~] not reviewable by the board except on final review.

(3) If a certificate holder retains counsel to represent him at the revocation hearing, the attorney shall file a written entry of appearance. All future notices, correspondence and orders shall be transmitted to that attorney and all future filings, motions or requests shall be submitted by that attorney on behalf of the certificate holder.

(4) A certificate holder **with a pending revocation complaint** shall submit written notice to the board through the office of its executive secretary of any change in address **during the pendency of revocation proceedings**.

(5) A list of witnesses who may be called to testify shall be filed with the executive secretary of the board by each party at least five (5) days prior to the hearing. Failure of either party to file a witness list within the prescribed time shall restrict the party to **calling witnesses for** rebuttal **only**.

(6)(a) Subpoena and subpoena duces tecum forms shall be issued at the request of any party by the chief state school officer. Request for the subpoena forms shall be submitted to the executive secretary of the board. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(b) Witnesses appearing pursuant to KRS 161.120(3)(b) shall receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in a civil action. Fees, mileage and expenses shall be paid by the party at whose request the witness is subpoenaed. **The certificate holder shall be informed of fees and mileage expenses prescribed by law for witnesses.**

(7) Deposition of witnesses.

(a) The testimony of any material witness may be taken by deposition **for good cause shown** [~~only in extraordinary circumstances~~] and upon written authorization by the hearing officer or by the executive secretary of the board if the full board is scheduled to conduct the hearing.

(b) The party requesting the deposition shall file a written request setting forth the name and address of the witness whose testimony is desired, a showing of the nature and materiality of the testimony, a showing that the witness will be unable or cannot be compelled to attend; and shall request an interim order requiring the witness to appear and to testify by deposition. The cost of the deposition shall be paid by the party requesting the deposition.

(c) The request for deposition shall be filed no less than ten (10) days prior to the hearing. Any objections shall be filed no less than five (5) days prior to the hearing. Copies of the request and any objection shall be mailed to all parties.

(8) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions [~~and/~~]or requests and address any other matter which will facilitate the hearing.

(9) The executive secretary, attorney for the board and board staff may participate in ex parte communications concerning pending and impending proceedings before the board relating to:

(a) Procedural questions; and

(b) Scheduling of hearings.

(10) If the hearing is to be conducted by the board, the executive secretary shall be authorized to grant or deny all prehearing motions. Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss or similar motions which can be delayed until the time of the hearing.

(11) [~~Section 6(3)~~] Discovery. In addition to the exchange of witness lists, either party is entitled to inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) The written statement of any witness, other than the certificate holder, proposed to be called by a party and of witnesses having personal knowledge of the acts or events which are the basis for the proceeding;

(b) All writings, including [~~but not limited to,~~] reports of mental, physical and blood examinations and other documents proposed to be offered into evidence;

(c) Any other writing or thing which is relevant and which would be admissible in evidence and which is not otherwise exempt from disclosure. A reasonable fee for reimbursement of the actual cost of producing or copying the documents may be charged by the party from whom the evidence is sought.

(d) For the purpose of this section, "statement" includes written statements by the person signed or otherwise authenticating the writing, stenographic, electrical recordings, or transcripts thereof, of oral statements by the person[~~, and written reports or summaries of such oral statements~~].

Section 6. Conduct of Hearing. (1)(a) Unless otherwise authorized by the Education Professional Standards Board, the board shall use the hearing officer to hear **all** cases, to make findings of fact, conclusions of law, and **recommended orders** [~~recommendations~~] to the board for a decision. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including prehearing motions. He shall require an orderly and proper decorum at the hearing, shall be authorized to restrict the number of [~~character~~] witness [~~testimony~~] and to set a reasonable time limit on the length of the hearing, and shall be authorized to require compliance with his rulings.

[~~(b)1. If the hearing is to be conducted by the board, the executive secretary shall be authorized to grant or deny all prehearing motions. Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss or similar motions which can be delayed until the time of the hearing.~~]

(a) [~~2.~~] If the [~~full~~] board hears a case, a legal adviser provided

by the Office of the Attorney General shall preside at the hearing and advise the board on matters of law. The board itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the legal adviser, including the admission and exclusion of evidence.

(b) The legal adviser shall remain with the board during its deliberations, but shall not engage in deliberations, or in the discussions of the facts or the factual findings. The legal adviser may respond to questions regarding legal issues and assist the board in the drafting and final wording of the findings of fact, conclusions of law and order.

(3) [~~(2)~~] A hearing officer or a member of the board shall voluntarily disqualify himself and withdraw from any case in which he cannot afford the certificate holder a fair and impartial hearing**. The parties may conduct a voir dire of the board members or hearing officer.** [~~or consideration.~~] Any party may request the disqualification of a hearing officer or a **board** member **and shall state** [~~of the full board by filing an affidavit, prior to the taking of evidence at a hearing, stating~~] with particularity the grounds upon which it is claimed that **there is bias or prejudice and that** a fair and impartial hearing cannot be afforded. **When** [~~Where~~] the request concerns a board member, the question shall be determined by the other members of the board. **When** [~~Where~~] the request concerns a hearing officer, the question shall be determined by the executive secretary of the board.

(4) Evidence.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights to:

1. A trial-type hearing;

2. Conduct a voir dire;

3. Call and examine witnesses;

4. Introduce exhibits;

5. Cross-examine opposing witnesses on any matter relevant to the issues;

6. Impeach any witness regardless of which party first called the witness to testify; and

7. Rebut evidence.

(c) If the certificate holder does not testify in his behalf, he may be called and examined as if under cross-examination. Upon motion by either party and authorization by the board or the hearing officer, either party may submit rebuttal evidence by deposition either party after the hearing is adjourned for good cause shown. The introduction of testimony taken in this manner shall be limited to rebuttal testimony only and shall be submitted within a defined time frame as ordered by the board or the hearing officer.

[~~(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence. If the certificate holder does not testify in his behalf, he may be called and examined as if under cross-examination.~~]

(d) [~~(c)~~] The hearing shall not be conducted according to technical rules relating to evidence and witnesses. The formal rules of evidence and civil procedure shall not apply. Any relevant evidence **may** [~~shall~~] be admitted if it is the sort of evidence on which reasonably prudent persons rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

(e) Upon a showing of unavailability or other good cause, [~~(d) If~~] the testimony of any witness [~~has been~~] previously **examined** [~~taken~~] under oath or affirmation in a criminal, civil or administrative adjudicatory action and recorded by audio, video or written transcription, subject to cross-examination by the certificate holder, [~~then the recorded testimony of the witness~~] may be presented by either party in lieu of oral testimony. A request to substitute the oral testimony of any witness shall be submitted in writing to the hearing officer, or if the board is to hear the case, to the executive secretary of the board, **at least** [~~within~~] ten (10) days **prior to** [~~of~~] the hearing. The opposing party may file written objections setting [~~the~~] forth in detail the reason for the objection **at least** [~~within~~] five (5) days **prior to** [~~of~~] the hearing.

(f) [~~(e)~~] The proceedings and evidence presented shall be recorded by a court reporter.

(5) **Administrative** [~~Judicial~~] notice. In reaching a decision, the board **or hearing officer** may take official notice of cognizable facts which may be judicially noticed by the courts of Kentucky and of any generally accepted technical and scientific matter. Board members **or the hearing officer** may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to the record. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters of evidence by evidence or by written or oral presentation or authority. The board or its hearing officer shall determine the manner by which a party may refute the officially noticed matter.

Section 7. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare within **thirty (30)** [~~ten (10)~~] days after the case is submitted a recommended order, including findings of fact and recommendations, based on the evidence, facts, and information presented at the hearing and contained in the record. The recommended order shall be in such form that it may be adopted as the decision in the case.

(2) [~~At the direction of the hearing officer,~~] The recommended order shall be **issued at the direction of the hearing officer** [~~filed with the board~~] through the office of **the board's** [~~its~~] executive secretary**.** [~~and~~] A copy **shall be mailed by means of certified mail, return receipt requested,** [~~served~~] by the executive secretary **to** [~~on~~] each party **or upon** [~~and~~] his [~~or her~~] attorney **if represented by counsel**.

(3) Any party may submit written exceptions to the **hearing officer's** findings of fact and **recommended order** [~~recommendations~~]. Exceptions shall be filed with the board through the office of the executive secretary within ten (10) days **following receipt** [~~of the entry~~] of the recommended order**.** [~~, unless otherwise directed by~~] The hearing officer **for good cause shown may order the period enlarged if request is made before expiration of the period originally prescribed.** [~~at the time the recommended order is entered and served on all parties.~~] The length of the written exceptions shall be limited to ten (10) pages **unless otherwise extended by permission of the hearing officer upon motion for extension by either party**.

(4) Exceptions not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making **its** [~~a~~] final decision. **For the purpose of this section, written exceptions shall be considered to have been timely filed if postmarked on the date due.**

Section 8. Board Review and Final Action. (1)(a) The board may adopt **or reject** the recommended order of the hearing officer in its entirety, or may increase or reduce the proposed period of revocation or suspension and adopt the balance of the recommended order

(b) If the recommended order is **rejected** [~~not adopted~~] by the board as provided in paragraph (a) of this subsection, the board itself may decide the case upon the record, [~~including the transcript,~~] with

or without taking additional evidence or may **remand** [~~order~~] the case [~~remanded~~] to the hearing officer for further action as **deemed** appropriate **and ordered by the board**. [~~By stipulation of the parties, the board may decide the case upon the record without including the transcript.~~] If additional evidence is introduced before the board [~~itself~~], **board members shall not** [~~no board member may~~] vote **on the final disposition of the case** unless the member heard the additional [~~oral~~] evidence. **The taking of additional evidence shall be completed no more than forty-five (45) days after the hearing officer's recommended order is submitted to the board for final action. The taking of additional evidence under this subsection shall not be construed as a violation of the time frame within which the original hearing under KRS 161.120(3)(a) shall take place.**

(c) The board **shall** [~~will~~] consider the hearing officer's recommended order at its next regularly scheduled public meeting following the filing of the recommended order **and the parties' written exceptions**.

(2) Following consideration by the board, a final order shall be entered disposing of the revocation matter within five (5) days **following** [~~of~~] the public meeting, unless within that time the board commences proceedings **to take additional evidence** [~~to decide the case upon the record, including the transcript, or without the transcript where the parties have so stipulated~~].

(3) If the board hears the case, the board shall issue its **final** decision within five (5) days **following** [~~of~~] submission of the case. The order shall be prepared immediately upon final decision by the board, entered and served at the direction of the board by the executive secretary to the board. Copies of the order shall be served on all parties personally or by certified mail by the board through the office of its executive secretary. The final decision of the board shall become effective when the board enters the written final decision.

(4) Form of the decision. The decision shall be in writing and shall contain findings of fact, **conclusions of law,** a determination of the issues presented and penalty, if any. [~~The findings may be stated in the language of the pleadings or by reference thereto.~~]

Section 9. Defaults. [~~If~~] The certificate holder**'s failure** [~~fails~~] to appear at the hearing **shall constitute a waiver of the right to a hearing.** [~~,~~] The board **or hearing officer** may take action based upon the respondent's express admissions, [~~or~~] the entry of a guilty plea [~~in a criminal court of law,~~] or upon a finding of guilty [~~by a jury~~] in a criminal court of law, or upon [~~other~~] evidence **contained within the administrative record without a hearing and in the absence of the certificate holder,** [~~and affidavits that may be used as evidence without notice to the certificate holder.~~]

Section 10. Revocation or Suspension Upon Voluntary Surrender. (1) The board may revoke or suspend a teaching certificate upon a voluntary surrender of the certificate. The revocation or suspension of the teaching certificate shall be for a defined period of time or for an indefinite period, and may be according to specified terms and conditions best adapted to protect the health, welfare and safety of school children and to rehabilitate and/or educate the certificate holder.

(2) The executive secretary to the board, or designee, is authorized to and may negotiate the terms and conditions of the revocation or suspension upon voluntary surrender.

(3) **A** [~~No~~] revocation or suspension upon voluntary surrender shall **not** be final until approved by the board. The written approval of the boards shall be in [~~the form of a written document~~] setting forth the terms and conditions of the revocation or suspension upon voluntary surrender. The written document shall further state that the certificate holder agrees that he is ineligible to hold a teaching certificate, that the surrender of the certificate is for cause, shall set forth findings of fact and that the certificate holder has surrendered the certificate voluntarily, knowingly and intelligently. The written document shall be signed by the certificate holder, his attorney, if any, the chairman of the board and the attorney for the board.

Section 11. Reinstatement of Certificate [~~or Reduction of Penalty~~]. (1) Any individual whose certificate has been revoked may file a written petition seeking reissuance of the teaching certificate which shall state the reasons the applicant believes himself to be suitable for reissuance.

(2) The board may schedule a hearing to determine if the applicant is suitable for reissuance of the teaching certificate. The hearing may be held before the board or before a hearing officer appointed by the board. If the petition is heard before a hearing officer, the hearing officer shall submit a written report to the full board stating findings of fact and a recommendation as to whether the certificate shall be reissued.

(3) The burden of proving suitability for reissuance shall rest on the applicant seeking reinstatement.

(4) The board's final decision shall state the reasons **for denial of reinstatement or reissuance** [~~therefore~~], and may include terms and conditions that the board reasonably deems appropriate to impose as a condition of reissuance.

(5) In addition to meeting the requirements of KRS 161.120(5), applicants for reissuance of a revoked certificate **shall** [~~must~~] satisfy all current educational requirements for the certificate.

Section 12. Contempt. If any person [~~in revocation proceedings before the board~~] disobeys or refuses any lawful order or refuses to respond to a subpoena or thereafter refuses to be examined, or is guilty of misconduct during the hearing, the board **may** [~~shall~~] certify the facts to the circuit court in and for the county where the proceedings **were** [~~are~~] held **and petition the circuit court to issue an order compelling the witness to obey the order of the board or to respond to the subpoena to appear and testify before the board. If the person disobeys the circuit order, the board may petition the circuit court for an** [~~. The court shall thereupon issue an~~] order directing the person to appear before the court and to show cause why he should not be **held in** [~~punished as for~~] contempt. The order and a copy of the **petition** [~~certified statement~~] shall be served on that person. The same proceedings shall be held, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before the circuit court.

Section 13. Application of Hearing Procedures in Sections 1 through 14 of this Administrative Regulation to Denial of Initial or Renewal Application for a Certificate. (1) The due process hearing procedures described in Sections 1 through 14 of this administrative regulation shall apply to the denial of an individual's initial application for a Kentucky teaching certificate where the facts indicate the applicant's unfitness to teach.

(2) The due process hearing procedures described in Sections 1 through 14 of this administrative regulation shall apply to the denial of an application for renewal where there is a complaint pending against the certificate holder before the board for certificate revocation.

Section **14.** [~~13.~~] 704 KAR 20:580, Certificate revocation procedures, is hereby repealed.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: December 15, 1992
FILED WITH LRC: December 15, 1992 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amended After Hearing)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and

used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.

(2) Procedure for determining confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.

(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail

to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.

(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:

(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

(b) A fully forecasted test period and shall include:

1. A statement of the reason the adjustment is required;

2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);

3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;

7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

10. For the purposes of this regulation, an affiliate is an entity that:

a. Is wholly owned by a utility; or

b. In which a utility has a controlling interest; or

c. That wholly owns a utility; or

d. That has a controlling interest in a utility; or

e. That is under common control with the utility.

11. For the purposes of this regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and

b. Exercises such power:

(i) Through one (1) or more intermediary companies, or alone; or

(ii) In conjunction with, or pursuant to an agreement; or

(iii) Through ownership of ten (10) percent or more of the voting securities; or

(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or

(v) Contract; or

(vi) Any other direct or indirect means.

(2) Notice of intent. Utilities with gross annual revenues greater than $1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.

(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;

(c) Electric, gas, water and sewer utilities shall include the **effect** ~~[affect]~~ upon the average bill for each customer class to which the proposed rate change will apply;

(d) Local exchange companies shall include the **effect** ~~[affect]~~ upon the average bill for each customer class for the proposed rate change in basic local service;

(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;

(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;

(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and

(i) The commission may grant a utility with annual gross revenues greater than $1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.

(4) Manner of notification.

(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.

(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.

(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:

1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;

2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or

3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.

(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.

(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than

thirty (30) days of the filed date of the application.

(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.

(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.

(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and **quantified** explanation for all proposed adjustments **with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment**;

(b) If the utility has gross annual revenues greater than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the **effect** ~~[affect]~~ that the new rate(s) will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water or sewer service the **effect** ~~[affect]~~ upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is a local exchange company the **effect** ~~[affect]~~ upon the average bill for each customer class for the proposed rate change in basic local service;

(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) The most recently filed federal and state income tax returns;

(k) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(l) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

~~[(m) A quantified explanation with proper support for all proposed price changes, escalation factors, and changes in activity levels;]~~

(m) ~~[(n)]~~ The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(n) ~~[(o)]~~ The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(o) ~~[(p)]~~ A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(p) ~~[(q)]~~ A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(q) ~~[(r)]~~ Prospectuses of the most recent stock or bond offerings;

(r) ~~[(s)]~~ Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(s) ~~[(t)]~~ The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(t) ~~[(u)]~~ If the utility is a wholly-owned subsidiary, the most recent consolidated federal income tax return of the utility's parent, consolidated financial statements of the utility's parent and any supporting schedules of the jurisdictional utility;

(u) ~~[(v)]~~ Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;

(v) ~~[(w)]~~ If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon to demonstrate that each amount charged, allocated or paid during the test period was reasonable;

(w) ~~[(x)]~~ If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(x) ~~[(y)]~~ Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments;

(e) The number of customers to be added to the test period - end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast **unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application** [~~except for the correction of mathematical errors~~].

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement **(exclusive of dividends per share or earnings per share)**;

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) The most recently filed federal and state income tax returns;

(q) The most recently filed consolidated federal income tax return of the utility's parent;

(r) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;

(s) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(t) The quarterly reports to the stockholders for the most recent five (5) quarters;

(u) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(v) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(w) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

(x) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(y) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. **The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission. [:]**

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period **(the utility may also provide a summary segregating those items its proposes to recover in rates)** of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation **;by title**

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements, revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request. [~~Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 8 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:~~

~~(a) Financial exhibit (see Section 6 of this regulation).~~

~~(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.~~

~~(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.~~

~~(d) A statement in full of the reason why the adjustment is required.~~

~~(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.~~

~~(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).~~

~~(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) of this section, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:~~

~~(a) Total amount of interest charged to construction.~~

~~(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.~~

~~(c) Details of any apportionment used.~~

~~(d) Monthly revenues and operating expenses.~~]

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the

complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.
(b) Answer.
(c) Application.
(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant)	)	
Complainant	)	
	)	No. _____
vs.	)	(To be inserted by the
	)	secretary)
	)	
(Insert name of each defendant)	)	
Defendant	)	

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of ____, 19___ .

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant)	)	
COMPLAINANT	)	
	)	No._____
vs.	)	(To be inserted by the
	)	secretary)
	)	
(Insert name of each defendant)	)	
DEFENDANT	)	

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of	)	
(here insert name of each	)	
applicant) for (here insert desired	)	No._____
order, authorization, permission	)	(To be inserted by the
or certificate, thus: "Order	)	secretary)
authorizing issue of stocks	)	
and bonds")	)	

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____,19___.

(Name of applicant)

(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment of rates of the (state name of corporation).	) No._____) (To be inserted by the) the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19___, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

(Name and address of company)

(Name and address of attorney)

GEORGE EDWARD OVERBEY, JR., Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 10 a.m.

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

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

RELATES TO: KRS 216B.010 to 216B.130, **216B.450 to 216B.459**, 216B.990[, ~~Acts 1992 c. 332~~]
STATUTORY AUTHORITY: KRS 216B.042, 216B.105, **216B.450 to 216B.459** [~~Acts 1992 c. 332~~]
NECESSITY AND FUNCTION: KRS 216B.042, [~~and~~] 216B.105 and **216B.450 to 216B.459** [~~Acts 1992 c. 332~~] mandate [~~mandates~~] that the Kentucky Cabinet for Human Resources regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached and separate building, street access, telephone service, dining, and street address.

(4) "Full-time equivalent (FTE)" for this regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

(5) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.

(6) "Holding" means forced positioning of a resident by staff without use of mechanical devices.

[~~(7) "Home like" means providing opportunities for adult child communication, shared tasks, parent child learning, congregate meals, and living group activities where day to day routines for all residents are planned, predictable and appropriate to the ages and levels of functioning of the residents.~~]

(7) [~~(8)~~] "Licensure agency" means the Division of [~~for~~] Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(8) [~~(9)~~] "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(9) [~~(10)~~] "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning; a social worker with master's degree; a nurse with bachelor's degree and two (2) years' experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential setting for children; and other professionals from disciplines related to the treatment of mental illness, such as occupational, or expressive[, ~~or recreational~~] therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.

(10) [~~(11)~~] "Psychiatric residential treatment facility (PRTF)" means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) [~~sixteen (16)~~] beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

(11) [~~(12)~~] "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(12) [~~(13)~~] "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.

(13) [~~(14)~~] "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.

(14) [~~(15)~~] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

Section 2. Applicability. (1) A certificate of need shall be required for all psychiatric residential treatment facilities.

(2) If a residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the residential treatment facility and the licensed facility with which it shares grounds shall not have any joint activities or interactions, **except for organized education and recreation activities conducted by a school operated by the local educational authority for residents for whom it is determined by the local educational authority that the program provided by the school is appropriate for all residents in the program and is provided in accordance with Section 12(6) of this administrative regulation**;

(b) The program [~~executive~~] director and direct-care staff shall not

serve both the licensed facility with which it shares grounds and the residential treatment facility;

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(3) PRTF's that are located on the same grounds in accordance with Section 1(10) of this regulation may share joint activities and staff.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by a government agency shall [~~must~~] have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall [~~must~~] be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there shall [~~must~~] be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the program [~~executive~~] director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents.

(b) Overseeing the system of financial management and accountability.

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care.

(d) Electing, appointing, or employing the program [~~executive~~] director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions.

(e) Establishing an organization table and establishing bylaws or rules and regulations or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws or rules and regulations or policies and procedures must define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws or rules and regulations or policies and procedures shall [~~must~~] be reviewed at least every two (2) years and revised as necessary.

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall [~~will~~] meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program [~~Executive~~] Director. (1) The program [~~executive~~] director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program [~~executive~~] director's absence, he shall [~~must~~] designate a person who shall [~~will~~] be responsible for the day-to-day management of the facility.

(2) The program [~~executive~~] director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems. Minimum qualifications shall be a master's degree in psychology, social work, nursing, or education with appropriate licenses. The program [~~executive~~] director shall [~~must~~] have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check. If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program [~~executive~~] director shall be responsible to the governing body in accordance with the bylaws or rules and regulations for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and [~~.~~]

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

(4) The program [~~executive~~] director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall [~~will~~] formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program [~~executive~~] director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment [~~and~~];

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall [~~must~~] be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements with [~~within~~] regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which must be performed by a psychiatrist specified within this regulation. If [~~When~~] a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which must be performed by a recreational therapist specified within this regulation.

3. A total of at least two (2) full-time staff shall be employed from two (2) of the following professions (i.e., these staff cannot be from the same profession):

a. Psychologist with Ph.D. or master's degree and autonomous functioning;

b. Social worker with master's degree with three (3) years of inpatient or outpatient clinical experience in psychiatric social work; or

c. Nurse with bachelor's degree and three (3) years' supervised experience in a mental health setting.

4. Staff for the profession listed in subsection (3) of this section who is not employed on a full-time basis, shall be employed at least ten (10) percent of full-time equivalency [~~for eight (8) or fewer residents, fifteen (15) percent of the time for between nine (9) to twelve (12), and twenty (20) percent for thirteen (13) to sixteen (16) residents~~].

5. There shall be a ratio of full-time equivalent professional staff to residents of 1:6.

6. A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

7. Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

8. A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1) member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the program [~~executive~~] director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;

2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for residents of each living unit at all times when residents are not in

school;

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities for each living unit during normal waking hours when the residents are on the unit; however, if the number of residents present on the unit is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school;

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member for each living unit shall be immediately available on-site to assist with emergencies or problems which might arise;

5. If [~~When~~] a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member; and [~~.~~]

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements/internships. The facility shall ensure that student interns are supervised directly by an appropriate paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection, and supervision of all volunteers.

(c) Volunteers used within the program shall [~~must~~] meet the qualifications for the positions for which they volunteer.

(d) Volunteers shall not [~~cannot~~] be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program [~~executive~~] director or designee(s). Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program [~~executive~~] director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program [~~executive~~] director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;

2. Therapeutic principles and modalities used in the facility;

3. Building and maintaining a positive therapeutic milieu on the living unit;

4. Techniques of group and child management; and

5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and

cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he will receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian, or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

(a) The work is part of the individual treatment plan;

(b) The work is performed voluntarily;

(c) The patient receives wages commensurate with the economic value of the work;

(d) The work project complies with applicable law and regulation; and

(e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including but not limited to the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent. These rules shall be based on generally acceptable normal and natural behavior for the resident population served.

(15) The application of disciplinary measures shall [~~should~~] relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written

policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including but not limited to evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the facility;

(c) Identify the aspects of care that the facility provides;

(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

(h) Take actions to correct identified problems or to improve care;

(i) Assess the effectiveness of the actions and document the improvement in care; and

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability or a severe emotional disability in accordance with HB 554 of the 1992 General Assembly (this does not preclude the facility from admitting a child with multiple diagnoses) [~~and adolescents~~] who meet its written admission criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall [~~may~~] not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall [~~must~~] be based on the services provided by the facility and the needs of residents; and

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

(b) The intake process shall include an initial assessment of the resident performed [~~done~~] by the professional staff. [,] The results of the assessment shall be [~~which are~~] explained to the parent or [,] guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude [~~and which result in a conclusion~~] that:

1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and

2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(e) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.

(d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. When indicated, psychological assessments, including intellectual, projective, and personality testing;

5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational

assessment of the resident shall be done which includes, but is not necessarily limited to the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include, but not necessarily be limited to, the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include, but not be limited to the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall [~~must~~] be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning must begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency(ies) copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this regulation.

(b) The mental health services available through the residential treatment facility shall include, but are not limited to, the services listed below. These mental health services shall [~~must~~] be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include, but are not limited to, the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills must be practiced in accordance with state fire regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical, or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who will decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse or a certified medication aide under the supervision of a registered nurse;

(b) No medication shall be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation [~~and~~/]or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff **or a mental health associate**. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall [~~may~~] not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include, but are not limited to, the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to handicapped students. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to handicapped students. Educational services provided by a local school district may be provided within the facility or within the local school district. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents. In any case, education services approved by the Department of Education shall [~~must~~] be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (IEP) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program [~~executive~~] director or designee shall request an invitation to attend all IEP meetings. If allowed, the program [~~executive~~] director or designee shall attend all IEP meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for those children identified as handicapped pursuant to PL 94-142 shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be in one-half (1/2) hour increments for normal waking hours that residents are not in school.

2. The schedule shall include a full range of activities including, but not limited to physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures [~~at no time~~] shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special treatment procedures shall [~~must~~] be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and [.]

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall [~~must~~] be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the program [~~executive~~] director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) No facility shall use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by the facility or through contractual agreement.

(3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and

reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 9, 1992
FILED WITH LRC: December 9, 1992 at noon

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

902 KAR 20:330. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010 to 216B.130, **216B.450 to 216B.459**, 216B.990[, ~~Acts 1992 c. 332~~]

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and services. This administrative regulation provides for the minimum licensure requirements regarding physical plant requirements for psychiatric residential treatment facilities. This administrative regulation is intended to allow existing facilities, with modifications, to be licensed in this category of health care.

Section 1. Definitions. (1) "Psychiatric residential treatment facility (PRTF)" means freestanding facility with a maximum of eight (8) [~~sixteen (16)~~] beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this **administrative** regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

(2) "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(3) "Certificate of need" means an authorization by the Commission for Health Economics Control in Kentucky **or the Interim Office of Health Planning and Certification or its successor agency** to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.

(4) "License" means an authorization issued by the **cabinet** [~~commission~~] for the operation of a residential treatment facility.

(5) "Living unit" means the area that is supplied by the facility for daily living and therapeutic interaction of the residents. There shall be a maximum of eight (8) [~~ten (10)~~] residents per living unit.

(6) "Freestanding" means a completely detached and separate building, street access, telephone service, dining and street address.

Section 2. Preparation and Approval of Plans and Specifications. After receiving certificate of need from the Commission for Health Economics Control in Kentucky **or the Interim Office of Health Planning and Certification or its successor agency**, if necessary, the following procedures shall be followed:

(1) Before construction **shall begin** [~~is begun~~] for the erection of new buildings or alterations to existing buildings or any changes in facilities, the licensee or applicant shall submit plans in the detail specified in Section 3 of this regulation to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky, or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications shall [~~must~~] be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural [~~and/~~]or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing Buildings and Construction for determining compliance with the Kentucky Building Code. [~~All such~~] Plans and specifications **shall** [~~must~~] be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of construction.

(6) Access to the work. Representatives of the appropriate state agencies shall [~~will~~] have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 3. Compliance with Building Codes, Ordinances and Regulations. [~~(1) This section may be administered independently from other sections of this regulation.~~]

(1) [~~(2)~~] General. **The PRTF shall be in** [~~Nothing stated herein shall relieve the sponsor from~~] compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) [~~(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.

(3) [~~(4)~~] Prior to occupancy, the facility shall have final approval from appropriate agencies.

(4) [~~(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 **for both individuals with disabilities and other residents**.

(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) **Bedrooms shall not** **[~~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) **Rooms shall not** **[~~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 **and maintained**.

(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 **and maintained**.

(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 **shall** **[~~must~~]** be kept under double lock.

(c) [~~(d)~~] Clean linen storage **shall be kept** **[~~. 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. **Special fixtures, hardware, furniture or other items which might potentially endanger the safety of the secluded resident shall not be placed in the room.** [~~Therefore, special fixtures, hardware, etc., shall be used. No~~] Electrical switches, receptacles, etc. shall **not** be provided in the rooms. Doors shall swing outward and have provisions for staff observation while maintaining privacy from public and other patients. **The room shall be designed to** [~~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: December 9, 1992
FILED WITH LRC: December 9, 1992 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 1992

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:001. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations.

RELATES TO: KRS 164.740 to 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 1992 Acts ch. 462

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This regulation sets forth definitions of terms common to multiple regulations in this chapter. This amendment is necessary to reflect a change in terminology from "congressional methodology" to "federal methodology". [~~By defining the terms "Kentucky tuition grant" and "KHEAA grant", the substance of 11 KAR 5:010 is included in this regulation. Therefore, this regulation repeals 11 KAR 5:010.~~]

Section 1. Definitions. For purposes of Chapter 5 of Title 11 of the Kentucky Administrative Regulations, the terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "business school" is governed by KRS 164.740(3).

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under HB 468 (1992 RS), Part I, F. 43, p. 47 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) The definition of "college" is governed by KRS 164.740(4).

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by the institution; and

(c) For purposes of the college access program a business school, college, school of nursing or vocational school, and meets the requirements of the federal act; or

(d) For purposes of the Kentucky tuition grant program, a private, nonprofit college whose institutional programs are not comprised solely of sectarian instruction.

(8) The term "eligible noncitizen" means an individual who is either:

(a) A U.S. national;

(b) A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551);

(c) A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

1. "Refugee";
2. "Asylum granted";
3. "Indefinite parole" and/or "humanitarian parole";
4. "Cuban-Haitian entrant".

Students who are in the U.S. on an F1 or F2 student visa only or a J1 or J2 exchange visitor visa only or a G series visa only are not eligible for KHEAA grant assistance.

(9) "Eligible program of study" means an undergraduate program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; and

(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.

(10) The term "expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying federal [~~congressional~~] methodology set forth in Title IV, Part F of the federal act to the information that the student and his family provided on the application.

(11) The definition of "federal act" is governed by KRS 164.740(9).

(12) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters, or quarter hour system, or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and

(b) The tuition and fees customary for full-time study at that institution.

(13) The definition of "grant" is governed by KRS 164.740(10).

(14) "Kentucky tuition grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(15) "KHEAA grant" means awards of student financial assistance grants under the college access program or the Kentucky tuition grant program or a combination of the two (2).

(16) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual, measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded. The limit is depleted by one (1) semester:

(a) For any KHEAA grant disbursed to a full-time student in a semester; or

(b) By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(17) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(18) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(19) "Resident of Kentucky" or "resident" means a person who is

classified as an in-state student in accordance with criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040.

(20) "Total cost of education" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 25, 1993, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 20, 1993 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is estimated that for the 1993-94 academic year, approximately 100,000 students will complete the Free Application for Federal Student Aid, who will potentially seek KHEAA grants.

(a) Direct and indirect costs or savings to those affected: None. This regulation merely defines terms used in other regulations in this chapter. Consequently, the defined terms do not, themselves, impose a cost or create a savings associated with this regulation.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements. This regulation merely defines terms used in other regulations in this chapter, and therefore does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None. This regulation merely defines terms used in other regulations in this chapter.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. This regulation merely defines terms used in other regulations in this chapter, and therefore does not impose any 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: This regulation merely defines terms used in other regulations in this chapter. KRS 13A.222(4)(e) permits an administrative body to promulgate a single regulation to define terms used in several regulations.

(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: This amendment reflects a change of terminology resulting from P.L. 102-325, enacted July 23, 1992, which reauthorized the federal act and changed the term "congressional methodology" to "federal methodology".

Tiering: Was tiering applied? No. This regulation merely defines terms used in other regulations in this chapter. Therefore, the concept of tiering would not apply to defining terms.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA grants for use in 1993-94 [~~1992-93 and subsequent years and to delete common definitions now being placed in a separate regulation. The provisions of this regulation substantially duplicate 11 KAR 11:020. Therefore, an amendment to this regulation repeals 11 KAR 11:020~~].

Section 1. In order to receive KHEAA grants, the 1993-94 Free Application for Federal Student Aid (FAFSA) [~~1992-1993 Kentucky Financial Aid Form~~], incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided on the FAFSA [~~by the authority~~]. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky , Monday through Friday, 8 a.m. to 4:30 p.m. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award.

Section 2. If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 25, 1993, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 20, 1993 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is estimated that for the 1993-94 academic year, approximately 100,000 students will complete the Free Application for Federal Student Aid, who will potentially seek KHEAA grants.

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

1. First year: For fiscal year 1993-94, a total of $20,896,300 has been appropriated for KHEAA grants to students. The amount of KHEAA grant is subject to change and is being reviewed in light of possible tuition increases at Kentucky's public institutions. If the total KHEAA grant amount remains at $1920, the average grant award is anticipated to be $774, providing grants to 27,000 students. If the total KHEAA grant amount is increased to $2040, the average grant award is anticipated to be $822, providing awards to 25,400 students. Use of the Free Application for Federal Student Aid Form will save each student the cost of processing a commercially available financial need analysis form, which previously amounted to at least $12.

2. Continuing costs or savings: Unknown. Funds have not yet been appropriated for the 1994-95 academic year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: This regulation requires annual completion of a free federal application form to determine financial need and eligibility for a KHEAA grant. Completion of this form will facilitate consideration of the student's circumstances for awarding all federal aid as well as KHEAA grants.

(2) Effects on the promulgating administrative body: None.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

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:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This regulation prescribes the required application form for consideration of awarding KHEAA grants. All applicants receive equal consideration for student financial assistance. The regulation permits the receipt of benefits based on financial need, and does not impose requirements on the public on an involuntary basis. Therefore, the concept of tiering would not apply.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the Kentucky tuition grant program to provide financial assistance to students to attend Kentucky educational institutions. This regulation sets forth the award determination procedures for the Kentucky tuition grant program. This amendment is necessary to delete a section regarding the minimum KHEAA grant award that appears to be inconsistent with the minimum CAP grant award. [~~common definitions that are being placed in a separate regulation and delete references to the state student incentive grant program.~~]

Section 1. Definitions. For purposes of this regulation, the terms listed below shall have the following meanings: "Pell grant" means an award under the Pell Grant Program operated by the secretary under the provisions of Title IV Part A, subpart 1 of the federal act.

Section 2. Kentucky Tuition Grant (KTG) Program Awards. Whether or not the applicant is eligible for a CAP grant award, the application shall be reviewed for determination of eligibility for a KTG.

Section 3. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

(1) Expected Pell grant;

(2) Expected family contribution; and

(3) CAP grant.

Section 4. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, no award shall be made.

(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 6 of this regulation except that KTG awards shall be offered only to the extent that funds are available.

(4) A KTG shall not exceed $1,200 for an academic year.

[~~Section 5. Minimum KHEAA Grant. The minimum KHEAA grant awarded to an eligible full-time student for a given academic year shall be $200.~~]

Section 5. [~~6.~~] A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 6. [~~7.~~] In no event shall the KHEAA grant award exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation

that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 7. [~~8.~~] If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 8. [~~9.~~] If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 9. [~~10.~~] Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 25, 1993, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 20, 1993 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is estimated that for the 1993-94 academic year, approximately 100,000 students will complete the Free Application for Federal Student Aid, who will potentially seek KHEAA grants.

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

1. First year: For fiscal year 1993-94, a total of $8,223,500 has been appropriated for KHEAA grants to students. The average KTG grant award is anticipated to be $1,085, providing grants to 7,580 students.

2. Continuing costs or savings: Unknown. Funds have not yet been appropriated for the 1994-95 academic year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

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 amendment is intended to correct an internal inconsistency in the regulation. Prior to its deletion, Section 5 of this regulation provided that the minimum combined KHEAA grant would be $200. This is no longer correct by virtue of the fact that a KHEAA grant is considered to be either a KTG grant or a CAP grant or a combination of the two, and the CAP grant alone to a student enrolled less than full-time may be less than the $200 level. Therefore, the erroneous provision is being deleted.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 5:145 Section 2(2) provides that a CAP grant for a student enrolled less than full-time shall be the tuition charge per credit hour, which may be less than $200.

(a) Necessity of proposed regulation if in conflict: This proposed amendment deletes the section in this regulation that would seem to conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This proposed amendment deletes the section in this regulation that would seem to conflict.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This proposed amendment merely corrects an internal inconsistency within the regulations. Therefore, the concept of tiering would not apply.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4)

STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation prescribes the award determination procedures for the CAP grant program. This amendment is necessary to change a reference from a minimum combined KHEAA grant award to a minimum CAP grant award. [~~The provisions of this regulation substantially duplicate 11 KAR 11:030. Therefore, this regulation contains a repeal of 11 KAR 11:030.~~]

Section 1. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $1,500 [~~$3,000~~] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time.

(2) Except as provided in subsection (3) of this section, the

maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution shall be the prevailing tuition charge per semester credit hour at publicly supported community colleges in Kentucky (not in excess of the maximum specified in subsection (1) of this section).

(3) The maximum awards specified in subsections (1) and (2) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly supported community colleges, as determined by the Council on Higher Education.

Section 3. Minimum CAP [~~KHEAA~~] Grant. The minimum CAP [~~KHEAA~~] grant awarded to an eligible full-time student shall be the lesser of $360 a semester or the amount of eligibility the student has remaining within the aggregate KHEAA grant limit [~~for an academic year shall be $200~~].

Section 4. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 5. In no event shall the KHEAA grant award exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 6. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 7. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 25, 1993, at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 20, 1993 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is estimated that for the 1993-94 academic year, approximately 100,000 students will complete the Free Application for Federal Student Aid, who will potentially seek KHEAA grants.

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

1. First year: For fiscal year 1993-94, a total of $12,672,800 has been appropriated for CAP grants to students. The amount of CAP grant is subject to change and is being reviewed in light of possible tuition increases at Kentucky's public institutions. If the CAP grant amount remains at $720, the average grant award is anticipated to be $572, providing grants to 22,155 students. If the CAP grant amount is increased to $840, the average grant award is anticipated to be $667, providing awards to 19,000 students.

2. Continuing costs or savings: Unknown. Funds have not yet been appropriated for the 1994-95 academic year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

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 amendment is intended to correct an internal inconsistency in the regulation. Prior to its amendment, Section 3 of this regulation provided that the minimum combined KHEAA grant would be $200. This is no longer correct by virtue of the fact that a KHEAA grant is considered to be either a KTG grant or a CAP grant or a combination of the two, and the CAP grant alone to a student enrolled less than full-time may be less than the $200 level. Therefore, the erroneous provision is being deleted.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 11 KAR 5:145 Section 2(2) provides that a CAP grant for a student enrolled less than full-time shall be the tuition charge per credit hour, which may be less than $200.

(a) Necessity of proposed regulation if in conflict: This proposed amendment amends the section in this regulation that would seem to conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This proposed amendment amends the section in this regulation that would seem to conflict.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This proposed amendment

merely corrects an internal inconsistency within the regulations. Therefore, the concept of tiering would not apply.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075, 18A.0751, 18A.115
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115 relates to promotion of career employees.

Section 1. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of a field employee is that address to which the employee is assigned at the time of appointment to the employee's current position.

Section 2. Demotion. (1) Demotions for cause shall be intra-agency only.

(2) If an employee with status requests in writing that he be demoted, the appointing authority may make a voluntary demotion. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be forwarded to the Commissioner of Personnel.

(3) Voluntary demotions may be interagency or intra-agency.

Section 3. Transfers. (1) An employee with status may be transferred from one department to another department.

(2) Transfers may be on a voluntary or involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3) If the transfer is on an involuntary basis, the employee shall receive notice of his transfer prior to the effective date of transfer. Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the transfer and the employee's selection for transfer, and the employee's obligation to report to the new work station. The notice shall also advise the employee that he has the right to appeal the transfer to the board within sixty (60) [~~thirty (30)~~] days of receipt of the notice, excluding the day that he received notification. When the employee is notified, copies of the notice shall be forwarded to the Commissioner of Personnel.

(4) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer, in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's moving expenses, if any, in accordance with the Finance and Administration Cabinet's Policy Procedure relating to Moving Expenses and Reimbursement. The notice specified in subsection (3) of this section shall advise the employee of these provisions.

(5) Involuntary transfers shall be intra-agency only.

(6) If an employee with status requests in writing that he be transferred, the appointing authority may make a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of Personnel.

(7) Voluntary transfers may be interagency or intra-agency.

Section 4. Reinstatement. Reinstatement may be made upon request of the appointing authority and with the prior approval of the Commissioner of Personnel. Approval shall include a finding that the candidate for reinstatement meets the current qualifications for the former job classification. If the reinstatement is to a different job classification, the candidate shall pass the appropriate examination prior to reinstatement unless the employee has previously had status in that job classification.

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 18, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 26, 1993, at 9 a.m. at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 21, 1993 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601 (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Contact person: R. Hanson Williams
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606, (48 FR 9209, March 4, 1983).

2. State compliance standards. The purpose of this regulation is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognize fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation, to our knowledge, is not stricter than the federal mandate.

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority shall [~~may~~] specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the

names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority shall [~~may~~] specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) The commissioner shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the nonavailability of any eligibles passed over for that reason.

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:056, Section 5.

Section 7. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.

LOWELL W. CLARK, Commissioner, Department of Personnel
JAMES M. SHAKE, Chairman, Personnel Board

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1993 at 9:30 a.m. in Room 392, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1993 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 384, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Contact person: Daniel F. Egbers

(1) Type and number of entities affected: Because selective certification is intended to be used only in situations where there is a demonstrable business necessity for particular job skills or characteristics, this amendment relates to vacant positions within the classified service of state government covered by KRS Chapter 18A. The number of selective certification requests that may be approved is uncertain.

(a) Direct and indirect costs or savings to those affected: Because this amendment involves the addition of a reporting requirement the only direct cost is a nominal cost to the department for copying and transmission of documents to the Personnel Board. There may be an indirect cost in the event the Personnel Board would wish to conduct an investigation. An indirect savings may result from the discouraging of nonbusiness related requests for selective certification.

1. First year: See item (1)(a) above.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): The department expects that this amendment will provide an additional safeguard against attempted patronage appointments which violate KRS 18A.140. Therefore, if the amendment has its desired effect, patronage lawsuits under Rutan v Republican Party of Illinois, 110 S.Ct. 2729 (1990) could be minimized resulting in a savings in costs of litigation.

(b) Reporting and paperwork requirements: This amendment would require that one copy of existing documents relating to selective certification approved requests be transmitted to the Personnel Board for its information. In calendar year 1991, for example, the department approved 70 requests for selective certification.

(2) Effects on the promulgating administrative body: Requires transmission of all documents relating to selective certification approvals to the Personnel Board.

(a) Direct and indirect costs or savings:

1. First year: See item (1)(a) above.

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

3. Additional factors increasing or decreasing costs: See item (1)(a)3 above.

(b) Reporting and paperwork requirements: See item (1)(b) above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The existence of selective certification has been criticized as being subject to abuse by political or other forms of favoritism and as being in derogation of an open competition form of employee selection and appointment. See, e.g. Minutes, 427th meeting of Administrative Regulation Review Subcommittee, August 5, 1992, Reported at 1992-1993 Interim Legislative Record, September, 1992, p. 7. The department recognizes that selective certification has legitimate and necessary business uses in situations where highly specialized services are required and believes that this procedure may be improved by this amendment. By providing a copy of approved selective certification requests to the Personnel Board (which has the statutory authority to investigate and issue corrective orders on abuses) agencies are placed on notice of an additional level of scrutiny by an independent agency. The department believes that this amendment will operate to discourage abuses and to provide a mechanism to correct them, if they occur.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None seen.

(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: This amendment has been discussed with Personnel Board staff prior to submission pursuant to KRS 18A.110(b) to determine if it would impose an undue burden. No preliminary objection was made.

TIERING: Is tiering applied? Yes. This amendment applies only to positions in the classified service.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. Definitions. (1) "A college or university" recognized by the board means an institution within the United States whose course credits would be accorded full recognition when transferred to a Kentucky state funded four (4) year institution of higher education.

(2) "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded and contains an authorizing signature or seal.

(3) "Quarter hour" shall be equal to 66/100ths of a semester hour.

(4) "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(5) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, business computing, statistics, or accounting.

(6) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. [~~1.~~] First Time Examination Applicants. The applicant shall submit:

(1) A completed "Application for Admission to the CPA Examination" (1992) that has been signed and acknowledged before a notary public. The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday;

(2) Two (2) photographs taken within ninety (90) days preceding the filing of the application, which bear the applicant's signature on the back;

(3)[~~(a)~~] An official transcript which evidences completion of the educational requirements specified in KRS 325.261 and as defined in this administrative regulation. A foreign applicant who graduated from a post-secondary educational institution outside of the United States shall, in place of the official transcript, submit an evaluation performed by Foreign Academics Credentialing Service (FACS) or by another credentialing agency which is a member of the National Association of Credential Evaluation Services, Inc. The evaluation shall certify that the foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university and that the candidate has a major or concentration in accounting. A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202 between 8:30 a.m. and 4:30 p.m., Monday through Friday. [~~201 KAR 1:062;~~

~~(b) The official transcript shall be a document issued by an institution of higher education and stamped with the institution's certifying seal or stamp; and~~]

(4) A fee of $125 dollars, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 3. [~~2.~~] An application for the May examination shall be filed with the board or postmarked no later than March 1st. Applications for the November examination shall be filed with the board or postmarked no later than September 1st.

Section 4. [~~3.~~] Provisional Examination Applicants. A person who expects to satisfy the educational requirements of KRS 325.261 and this administrative regulation [~~201 KAR 1:062~~] within ninety (90) days following an administration of the examination shall be eligible to submit an application for the examination if he:

(1) Satisfies the requirements of Sections 2 and 3 [~~1(1), (2), (4) and 2~~] of this administrative regulation;

(2) Submits a transcript of college courses completed;

(3)(a) Submits an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and this administrative regulation [~~201 KAR 1:062~~] within ninety days following the examination;

(b) The statement shall include a list of all course titles and credit hours in which the applicant is currently enrolled; and

(c) Submits a final official transcript showing completion of all educational requirements within ninety (90) days following the administration of the examination.

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a first-time candidate.

Section 5. [~~4.~~] Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 6. [~~5.~~] Letter of Intent to Attend the Examination. (1) The board shall mail a letter of intent with information about the dates, times and location of the next scheduled examination to candidates. The letter of intent shall be mailed to the most recent address provided by the candidate.

(2)(a) The candidate shall return the letter of intent to the board stating whether or not he will sit for the next scheduled examination.

(b) The letter of intent shall be postmarked or filed with the board no later than:

1. April 1, for the May examination; and
2. October 1, for the November examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the candidate shall return the letter of intent with the examination fee.

(b) A candidate who is taking the examination for the first time shall submit the examination fee with his application.

(c) Except as provided in paragraph (d) of this subsection, the examination fee shall be twenty-five (25) dollars per subject.

(d) The fee for accounting practice shall be fifty (50) dollars.

(e) The examination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4)(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:

1. Remain a conditional examination candidate;
2. Not be permitted to sit for the examination; and
3. Forfeit deferred examination fees.

(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.

(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:

1. Not be permitted to sit for the examination;
2. Forfeit fees paid; and
3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 [~~1~~] of this administrative regulation.

Section 7. [~~6.~~] (1) Except as provided by subsections (2) and (3) of this section, an examination fee shall be deferred to the next scheduled examination if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this

administrative regulation; and

2. Written request to defer the fee; and

(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:

1. Received by the board; or

2. Postmarked.

(2) A candidate shall be granted one (1) deferral.

(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.

Section 8. [~~7.~~] (1) A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or

2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the State Board of Accountancy of the state in which he intends to be licensed;

(b) One (1) photograph taken within ninety (90) days prior to the filing of his written request to the board;

(c) A check or money order:

1. In the amount of $100;

2. Payable to the Kentucky State Board of Accountancy; and

(d) The letter of intent required by Section 6 [~~5~~] of this administrative regulation.

ASA L. HORD, President

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 29, 1993, at 9 a.m. at the administrative offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by January 24, 1993, 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 wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, KY 40202, (502) 588-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: 600 first-time examination candidates.

1. First Year: No cost of savings to exam candidates in any year.

2. Continuing costs or savings: Same as 1.

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

(b) Reporting and paperwork requirements: These changes do not effect paperwork or reporting.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the State Board of Accountancy.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: Same as 1.

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will not change.

(3) Assessment of anticipated effect on state and local revenues: There will be no change in state revenues and local revenues are not affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist. These amendments merely clarify information in another regulation set for repeal.

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

(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: No

TIERING: Was tiering applied? No. All first-time CPA examination candidates are under the same requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), 314.051(1)

STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131(1)

NECESSITY AND FUNCTION: To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. Eligibility for Licensure by Examination. To be eligible for licensure by examination, applicants shall:

(1) Hold a high school diploma or equivalent.

(2) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure.

(3) Submit an official transcript of nursing program.

(4) Submit at least sixty (60) days prior to the date of the examination:

(a) A properly executed application for licensure or, if applicable, an application for readministration of the examination;

(b) Current administration of examination fee;

(c) Current application for licensure fee; and

(d) Two (2) photographs (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

(5) Submit certified [~~official~~] copies of court records of any misdemeanor [~~and/~~]or felony convictions with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) Pass [~~Achieve a minimum passing score of 350 on~~] the national council licensure examination or its equivalent [~~as report for licensed practical nurse or 1600 for registered nurse licensure~~].

(10) Pay all necessary fees to show evidence of meeting requirements for licensure as stated in this section and, if applicable, Sections 2 and 4 of this regulation.

(11) Meet the requirement of 902 KAR 2:150.

(12) [~~(11)~~] An application for licensure is valid for a period of one (1) year from date filed with the board or for a period of one (1) year from date last examination was written in Kentucky not to exceed two (2) years since the filing date of the original application for licensure in Kentucky.

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only). This requirement shall not apply to the following:

1. An applicant who is licensed as a registered nurse in a United States jurisdiction;

2. An applicant who has received a graduate degree in nursing from a university or college in the United States; or

3. A graduate of a program of nursing in Canada.

(b) If licensed in another United States jurisdiction or country, verification of licensure as a nurse [~~in another country~~] with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country and that no such action is currently pending.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1 of this regulation.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Licensing Examination Standards. (1) The applicant shall pass the national council licensure examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings;

(d) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content;

(g) The examination is given under strict security measures;

Section 4. Rewriting the Examination. Examination candidates who fail to achieve a passing result [~~score~~] may rewrite the examination after submission of retake application, after meeting the requirements as stated in Section 1 and, if applicable, Section 2 of this regulation and submission of current administration of examination fee.

Section 5. Release of Examination Scores. The board shall not release examination results [~~scores~~] to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing for out-of-state graduates,

(3) Other state boards of nursing when requested for licensure;

(4) National Council of State Boards of Nursing Inc.

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: Registered and practical nursing graduates; approximately 3,000 per year.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:090. Temporary work permit.

RELATES TO: KRS 314.101(3)

STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131(1)

NECESSITY AND FUNCTION: To protect and safeguard the health and safety of the citizens of Kentucky and to provide a means for applicants to be employed while application for a license is being

processed.

Section 1. An applicant for a license by endorsement or examination to practice nursing in Kentucky may be issued a temporary work permit to practice until the license is issued or denied.

Section 2. Eligibility for Temporary Work Permit. (1) A graduate of a board approved program of nursing in the United States or its territories who meets requirements as stated in 201 KAR 20:070 and is approved to write the first licensing examination administered [~~scheduled~~] by the board following graduation may be issued a temporary work permit upon payment of administration of examination and licensure application fees.

(2) A graduate of a school of nursing outside the United States who meets requirements as stated in 201 KAR 20:070 or 201 KAR 20:110 as applicable and is approved and has passed the commission on graduates of foreign nursing schools examination may be issued a temporary work permit upon payment of the administration of examination fee, if applicable, and licensure application fee.

(3) An applicant for a license by endorsement who meets requirements as stated in 201 KAR 20:110 and holds a current active license in another state may be issued a temporary work permit upon proper completion of the application and payment of the licensure application fee.

(4) An applicant for a license by examination who meets requirements as stated in 201 KAR 20:070 and holds a current active license in another United States jurisdiction may be issued a temporary work permit upon proper completion of the application and payment of all applicable fees.

Section 3. Limitations of Temporary Work Permit. (1) The new graduate, while holding a temporary work permit, shall practice only in nursing situations where continuous, direct, on-site supervision is provided by a registered nurse, physician or dentist.

(2) The temporary work permit issued to an applicant who fails the national council licensure examination or its equivalent shall be null and void upon notification to applicant of examination results.

(3) An applicant who has failed the national council licensure examination or its equivalent shall not be issued a temporary work permit.

(4) The temporary work permit is nonrenewable and shall be valid only for the length of time required to process applications for endorsement or to conduct and determine the results of licensure examinations.

(5) An individual who does not hold a current temporary work permit pending issuance of a current active license or who has received notification of failing the National Council Licensure Examination or its equivalent is prohibited from functioning in the capacity of a nurse.

(6) An individual who is employed or practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing as a nurse without a license and in violation of KRS 314.031 and subject to the penalties in KRS Chapter 314.

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: Registered nurse applicants, licensed practical nurse applicants, applicants by endorsement. Approximately 5,000 per year.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:095. Inactive nurse licensure status.

RELATES TO: KRS 314.041(7), 314.051(7)

STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131(1)

NECESSITY AND FUNCTION: To provide for administration of requirements for obtaining and maintaining inactive licensure status, and to establish requirements for changing licensure status from inactive to active.

Section 1. An individual may apply for inactive status in Kentucky by meeting the following requirements:

(1) Complete application.

(2) Pay current application fee for inactive status.

(3) Hold or have held Kentucky nurse licensure.

(4) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable.

Section 2. An individual who has been granted inactive status shall receive a license with such inactive status designated on the face of the license.

Section 3. An individual holding inactive licensure status for less than five (5) years from the date of the last active license who wishes

to apply for active licensure may do so by meeting the following requirements:

(1) Complete an active status application.

(2) Pay current application fee for change of licensure status from inactive to active.

(3) Complete thirty (30) hours of continuing education. [~~Meet continuing education requirements as specified in 201 KAR 20:230, Renewal of licenses, Sections 3 and 4 as appropriate.~~]

Section 4. An individual holding an active nurse license issued by another jurisdiction and who has held Kentucky inactive licensure status for less than five (5) years who wishes to apply for active licensure must complete an active status application, pay current application fee for an active license, and show evidence of one (1) of the following before an active license will be issued:

(1) Licensure in another jurisdiction and active nursing practice of at least 500 hours within the preceding five (5) years in that [~~another~~] jurisdiction; or

[~~(2) Completion of an approved refresher course in nursing within the previous two (2) years preceding the date of application for active Kentucky licensure status;~~]

(2) [~~(3)~~] Completion of thirty (30) hours of continuing education [~~requirements as specified in 201 KAR 20:230, Renewal of licenses, Sections 3 and 4 as appropriate~~].

Section 5. If an individual has held inactive licensure status in Kentucky for five (5) or more years from the date of the last active license, she shall complete an active status application, pay current application fee for an active license, and show evidence of:

(1) Licensure in another jurisdiction and active nursing practice of at least 500 hours within the preceding five (5) years in that [~~another~~] jurisdiction; or

[~~(2) For applications for active status licensure filed on or before December 31, 1988, completion of fifteen (15) contact hours of continuing education, for each year since the last year of active licensure, to a maximum of forty five (45) contact hours, provided that at least thirty (30) contact hours shall have been earned within the twenty four (24) months preceding the date of application. Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting this requirement.~~]

(2) [~~(3)~~] For applications for active status licensure filed on or after January 1, 1989, completion of fifteen (15) contact hours of continuing education for each year since the last year of active licensure, with a minimum of thirty (30) contact hours to a maximum of 150 contact hours. For applications completed prior to July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the earning period corresponding with the current licensure period. For applications completed after July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the current licensure period. [~~, provided that at least thirty (30) contact hours shall have been earned within the twenty four (24) months preceding the date of application.~~] Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting this requirement.

Section 6. For individuals who change licensure status from inactive to active during the last ten (10) months of a biennial contact hour earning period, contact hour earning which meets or exceeds the contact hour requirement for the upcoming licensure renewal may be accepted as evidence of earning for both current and upcoming licensure periods.

Section 7. An individual who has been granted inactive status in Kentucky is prohibited from being employed in this state as a registered nurse or licensed practical nurse or from functioning in the capacity of a nurse while maintaining the inactive status. An individual who is employed or who practices as a nurse in this state while on inactive status shall be considered to be practicing without a license and in violation of KRS 314.031 and subject to the penalties in KRS Chapter 314.

Section 8. Individuals changing licensure states from inactive to active during the first licensure period following issuance of a license by either examination or endorsement do not lose the continuing education exemption of KRS 314.073(1).

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: RNs and LPNs; approximately 200 per year.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 314.041(4), 314.051(5)
STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131(1)
NECESSITY AND FUNCTION: To assure that licensed nurses applying for licensure in Kentucky have met equivalent standards required of graduates of Kentucky programs of nursing. To provide some security in the endorsement process.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, applicants shall:

(a) Hold a high school diploma or equivalent.

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure equivalent to Kentucky requirements.

(c) Have taken a licensure examination acceptable to the board and shall have achieved a passing score equivalent to Kentucky requirements as stated in 201 KAR 20:070 or as determined by the board for applicants licensed prior to 1953.

(d) Have and submit a copy of a current active license to practice nursing in another U.S. jurisdiction or Canada.

(e) Accurately complete and submit application form and necessary information for licensure in Kentucky.

(f) Submit a recent (within past six (6) months) two (2) x three (3) inches photograph which shall be signed and dated on the front under the facial features. Snapshots are not acceptable.

(g) Submit the current fee for a licensure application.

(h) Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure or the country of original licensure (if not licensed in the United States), including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any pending disciplinary action.

(i) Report any disciplinary action(s) taken or pending on licenses by other jurisdictions.

(j) Submit official copies of court records of any misdemeanor and[~~/or~~] felony convictions with a letter of explanation.

(k) Meet the requirement of 902 KAR 2:150.

(2) An application is valid for a period of one (1) year from date of submission to board. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(b) Notify the board in writing as soon as any new address is established after submitting the application.

(3) After one (1) year from date of receipt of application, the applicant shall:

(a) Submit new application.

(b) Submit current licensure application fee.

(c) Meet requirements as stated in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) All graduates of foreign nursing schools shall:

(a) Meet the requirements of Section 1 of this regulation.

(b) Submit official transcript of nursing program.

(2) Graduates of foreign nursing schools who are not citizens of the United States shall submit evidence of legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Graduates of Canadian Nursing Schools. (1) All graduates of Canadian nursing schools shall meet requirements in Sections 1 and 2 of this regulation.

(2) Applicants who took the Canadian nurses association test service examination shall have:

(a) Successfully completed an examination that meets the criteria of 201 KAR 20:070(3); and

(b) Achieved a standard score of 350 on the five (5) part examination given prior to August, 1980, or 400 on the comprehensive examination given after August, 1980.

Section 4. Nursing Practice and Continuing Education Requirements. (1) The applicant who has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall submit evidence to verify such active practice.

(2) The applicant who has not been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall complete fifteen (15) contact hours in continuing education, for each year since the last year in which the applicant can demonstrate at least 100 hours of active practice. This provision does not apply to applicants who have been licensed for less than five (5) years from the date of initial licensure.

(3) No applicant shall be required to complete more than 150 contact hours in continuing education, provided that at least thirty (30) contact hours shall have been earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting the requirements stated in subsection (2) and (3) of this section.

SUSAN J. HOCKENBERGER, President
APPROVED BY AGENCY: December 3, 1992
FILED WITH LRC: December 9, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman
(1) Type and number of entities affected: RNs and LPNs; approximately 2,000 per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 314.041(8), 314.042(6), 314.051(8), 314.071, 314.073

STATUTORY AUTHORITY: KRS ~~[314.021, 314.031(1),]~~ 314.131(1)

NECESSITY AND FUNCTION: To provide for procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed License. (1) "Lapsed license" means a license which has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license.

(2) A lapsed license may be reinstated by:

(a) Submitting a completed application form;

(b) Paying the current application fee; and

(c) Meeting all other requirements of this section.

(3) In the case of an application for reinstatement of a lapsed license to active status, the applicant shall complete fifteen (15) contact hours of continuing education for each year since the date of last active licensure, with a minimum of thirty (30) contact hours to a maximum of 150 contact hours. For applications completed prior to July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the earning period corresponding with the current licensure period. For applications completed after July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the current licensure period. Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting this requirement. Individuals who were exempt from the contact hour earning requirement pursuant to KRS 314.073(1) and who apply for reinstatement of a lapsed license within one (1) year from the date of lapse shall earn fifteen (15) contact hours.

(4) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection 3 of this section shall not apply. The applicant shall submit evidence to verify the current licensure and active practice.

(5) An applicant may apply for reinstatement of a lapsed license on inactive status. The applicant shall meet the requirements of subsection (2)(a) and (b) of this section.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application;

(b) Paying the current application fee; and

(c) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by completing an application, paying the required fee and notifying the board, in writing, that the requirements of the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, then the license will be reinstated subject to the remaining probationary period. The individual shall comply with all requirements for reinstatement.

Section 3. Miscellaneous Requirements. (1) For individuals who reinstate their licenses during the last ten (10) months of a biennial continuing education contact hour earning period, contact hour earning which meets or exceeds the contact hour requirement for the upcoming licensure renewal may be accepted as evidence of earning for both current and upcoming licensure periods.

(2) A copy of an official name change document (court order, marriage certificate, divorce decree) shall be submitted by the applicant when making application, if applicable.

~~[Section 1. Lapsed License. A lapsed license may occur for any of the following reasons:~~

~~(1) Failure to submit a completed and timely application for license renewal for any reason.~~

~~(2) Failure to meet the continuing education requirement as prescribed by law and regulations.~~

~~(3) Failure to submit adequate data to enable the board to complete processing an application.~~

~~(4) Failure to submit current application fee.~~

~~Section 2. Requirements for Licensure Reinstatement. (1) If a licensee fails to renew a license as prescribed by law and regulation, the license shall lapse on the last day of the licensure period.~~

~~(2) The board may issue a license by reinstatement if the applicant:~~

~~(a) Submits a completed application form;~~

~~(b) Submits the current application fee; and~~

~~(c) In the case of an applicant for reinstatement of licensure on active status, completes fifteen (15) contact hours of continuing education for each year since the date of lapse, to a maximum of 150 contact hours, provided that at least thirty (30) contact hours shall have been earned within the twenty four (24) months preceding the date of application for reinstatement. Continuing education earned more than ten (10) years preceding the date of application for reinstatement shall not be counted toward meeting this requirement.~~

~~(3) The applicant who has been actively licensed and engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years shall submit evidence to verify such active practice. The Kentucky license shall be reinstated without the~~

~~applicant being required to obtain additional continuing education.~~

~~Section 3. For individuals who reinstate Kentucky nursing licensure during the last ten (10) months of a biennial contact hour earning period, contact hour earning which meets or exceeds the contact hour requirement for the upcoming licensure renewal may be accepted as evidence of earning for both current and upcoming licensure periods.~~

~~Section 4. The board may reinstate a license to either active or inactive status as requested by the individual reinstatement applicant, except as provided in Section 5 of this regulation.~~

~~Section 5. Reinstatement of a License Subject to Disciplinary Action. (1) If a license has been denied, suspended or revoked by the board in a disciplinary action, the individual may petition the board for reinstatement of licensure on active status after two (2) years, unless otherwise specified in a decision or agreed order entered by the board.~~

~~(2) The individual shall submit evidence in writing, verified by oath that:~~

~~(a) The requirements of a decision or agreed order have been met.~~

~~(b) The basis for the disciplinary action has been removed and that issuance of a license would no longer be a threat to public safety and health.~~

~~(3) In addition, the applicant shall comply with the requirements prescribed in Section 2 of this regulation for reinstatement of an active license.~~

~~Section 6. As a condition of reinstatement the board shall require retaking of the licensure examination and achievement of a passing score by an applicant for licensure who previously has successfully taken the examination but whose Kentucky license has been revoked by disciplinary action subsequent to December 31, 1987.~~

~~Section 7. A copy of an official name change document (court order, marriage certificate, divorce decree) shall be submitted by the applicant when making application, if applicable.~~]

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: RNs and LPNs; approximately 1,000 per year.

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

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131(1)

NECESSITY AND FUNCTION: To assure that applicants for renewal of licenses meet minimum standards set forth by the board as necessary for safe practice. To provide consistency in procedures.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit completed application form to board office, [~~to be received or~~] postmarked no later than the last day of the licensure period;

(3) Submit current fee;

(4) Have met continuing education contact hour requirements, if applicable;

(5) Submit certified copies [~~official copy(ies)~~] of court records of any misdemeanor [~~and/~~]or felony convictions with a letter of explanation;

(6) Report any disciplinary actions taken or pending on licenses in other [~~U.S.~~] jurisdictions;

(7) Have paid all monies due to the board; and

(8) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable.

Section 2. Applicants for current inactive licenses and those who are renewing for the first time an original Kentucky license issued by examination or endorsement are exempt from meeting continuing education contact hour requirements.

Section 3. (1) [~~Continuing Education Contact Hours Required for Renewal of Current Active Registered Nurse Licenses. (1) Continuing education contact hours earned by licensure renewal applicants according to board requirements shall meet requirements for renewal of 1986 and 1988 registered nurse licenses as applicable to the following:~~

~~(a) Beginning in 1984, applicants shall earn thirty (30) contact hours of continuing education during the period of June 1 through~~

~~May 31 of the second succeeding year for renewal of registered nurse licenses expiring on October 31 of a current licensure period.~~

~~(b) Beginning in 1986, applicants shall earn thirty (30) contact hours of continuing education during the period of June 1 through October 31 of the second succeeding year for renewal of registered nurse licenses expiring on October 31 of a current licensure period.~~

~~(2) Beginning in 1988 and thereafter,~~] Applicants for renewal of current active registered nurse licensure shall earn thirty (30) contact hours of approved continuing education during the period of November 1 through October 31 of the second succeeding year for renewal of registered nurse licenses expiring on October 31 of a current licensure period. Two (2) of the thirty (30) contact hours shall be in HIV/AIDS education approved by the Cabinet for Human Resources.

[~~Section 4. Continuing Education Contact Hours Required for Renewal of Current Active Licensed Practical Nurse Licenses. (1) Continuing education contact hours earned by licensure renewal applicants according to board requirements shall meet requirements for renewal of 1985 and 1987 licensed practical nurse licenses as applicable to the following:~~

~~(a) Thirty (30) contact hours of continuing education earned during the period of April 30, 1982 through May 31, 1985 for renewal of licensed practical nurse licenses expiring on October 31, 1985.~~

~~(b) Beginning in 1985, applicants shall earn thirty (30) contact hours of continuing education during the period of June 1 through October 31 of the second succeeding year for renewal of licensed practical nurse licenses expiring on October 31 of a current licensure period.~~]

(2) [~~Beginning in 1987 and thereafter,~~] Applicants for renewal of current active licensed practical nurse licensure shall earn thirty (30) contact hours of approved continuing education during the period of November 1 through October 31 of the second succeeding year for renewal of licensed practical nurse licenses expiring on October 31 of a current licensure period. Two (2) of the thirty (30) contact hours shall be in HIV/AIDS education approved by the Cabinet for Human Resources.

Section 4. [~~5. Licensure Period.~~] (1) The licensure period for current active and inactive registered nurse licenses shall be for a biennial period of November 1 through October 31 of even years.

(2) The licensure period for current active and inactive licensed practical nurse licenses shall be for a biennial period of November 1 through October 31 of uneven years.

Section 5. [~~6.~~] Valid and current licenses issued by the board may be renewed on either an active or inactive status.

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: RNs and LPNs; approximately 50,000 every 2 years.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:250. Definitions for registered and practical nurse prelicensure programs of nursing.

RELATES TO: KRS 314.011, 314.111[~~(1), (2), (3)~~]

STATUTORY AUTHORITY: KRS [~~Chapter~~] 314.131

NECESSITY AND FUNCTION: The Kentucky Board of Nursing is charged with the establishment of standards for programs of nursing which prepare individuals for licensure. This regulation deals with prelicensure registered and practical nurse prelicensure programs for which the following definitions shall apply.

Section 1. Definitions. (1) "Approval process" means the ongoing monitoring by which the board determines if standards are met by the programs of nursing, extension programs, faculties, clinical facilities, and any related units.

(2) "Approved program" means any program, department, division, school or college of nursing which has been granted developmental, initial, full or conditional approval by the board to prepare graduates for licensure as registered nurses and as licensed practical nurses.

(3) "Approved proposal" means a plan to establish a program of nursing which meets standards as determined by the board.

(4) "Board" means the Commonwealth of Kentucky Board of Nursing.

(5) "Clinical instructor" means a registered nurse who meets standards and is appointed by the governing institution of the program of nursing to assist nurse faculty in the supervision, teaching and evaluation of students in the clinical practice settings.

(6) [~~(5)~~] "Conditional approval" means a designation granted to a program of nursing when standards are not met.

(7) [~~(6)~~] "Developmental approval" means the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(8) [(7)] "Experimental program" means a program of nursing provided for in 201 KAR 20:300, Standards for prelicensure experimental programs of nursing.

(9) [(8)] "Extension program" means the implementation of a program of nursing on a site removed from the governing (degree or diploma-granting) institution where the same curriculum and program standards are utilized. The extension program may involve another institution of education and different clinical facilities.

(10) "Nurse [(9)] faculty" means a [group of] registered nurse[s] who meets standards and is appointed [are employed] by the governing institution of [in] the program of nursing for the purposes of teaching, guidance and evaluation of prelicensure nursing students.

(11) [(10)] "Full approval" means a designation granted to a program of nursing that has implemented the approved proposal and which continues to meet standards.

(12) [(11)] "Governing institution" means the body, agency or entity which has board approval to conduct a program of nursing and to grant degrees or diplomas in nursing.

(13) [(12)] "Initial approval" means the designation granted a new program of nursing upon admission of the first class, provided the date of enrollment is within eighteen (18) months after the board approves the proposal.

(14) [(13)] "Nurse administrator" means the registered nurse faculty member whose responsibility is to administer the educational program of nursing regardless of title assigned by the governing institution.

(15) [(14)] "Nursing experience" means employment in nursing clinical practice, nursing administration, nursing education, nursing research, or student experience in a post licensure program of nursing.

(16) [(15)] "Opening date" means a designated time for the first class to begin nursing major courses.

(17) [(16)] "Standards" mean requirements as set hereafter by regulations which deal with the approval of prelicensure registered nurse and practical nurse programs.

(18) [(17)] "Survey" means a planned visit by a board representative to a governing institution and program of nursing for the purpose of verifying, amplifying and clarifying reports to determine if standards are met.

(19) [(18)] "Transcript" means a legible and official copy of the original student record which bears the seal of the governing institution or a notarized signature of the registrar or the nurse administrator.

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: Clinical instructors, number unknown.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 164.2893

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: It is necessary to establish standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Faculty for Prelicensure Registered Nurse Programs. (1)(a) [Number and composition.] The faculty shall include [but not be limited to] a nurse administrator and no less than two (2) nurse faculty (one (1) of whom may also serve as nurse administrator). The faculty may include clinical instructors in the major areas of [clinical] nursing practice. [(a)] The faculty shall be adequate in number and composition to assess, plan [and to] implement and evaluate the program and its curriculum [of the program] in relation to the [its] stated purpose, philosophy, objectives, and number [and size] of students and classes admitted annually, and any additional extension, experimental or continuing education programs conducted.

(b) The nurse administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing. [The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.]

(2) The nurse administrator shall have the following qualifications:

(a) A minimum of a masters or higher degree in nursing if appointed after September 1, 1980.

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and experience in administration.

(c) Current license or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(3) [Nurse faculty qualifications:] (a) Effective September 1, 1993,

newly appointed nurse faculty in a baccalaureate degree prelicensure registered nurse program shall hold either a masters degree with a major in nursing or a baccalaureate degree with a major in nursing and a masters degree in a related field with a minimum of eighteen (18) graduate hours in nursing. [After September 1, 1985, at least three fourths (3/4) of the nurse faculty members including full-time equivalents in educational programs whose faculty prepares students for licensure as registered nurses and who award a baccalaureate degree in nursing shall have a minimum of a masters degree in nursing. Such a program of nursing may include as part of the three fourths (3/4) of nursing faculty with masters degrees, those nurse faculty members employed prior to September 1, 1980 who have a baccalaureate degree in nursing and a masters degree in a related field.

(b) After January 1, 1992, new nurse faculty appointees in baccalaureate degree programs shall hold a masters or higher degree in nursing.]

(b) [(c)] After July 13, 1990, a maximum of eighty (80) percent of the nurse faculty members including full-time equivalents in [educational programs whose faculty prepares students for licensure as registered nurses and who award an] associate degree registered nurse programs [in nursing] may hold:

1. An associate degree in nursing;
2. A diploma in nursing; or
3. A baccalaureate or higher degree in nursing.

A minimum of twenty (20) percent of the nurse faculty members of these programs shall hold a masters or higher degree in nursing.

(c) [(d)] The nurse faculty [members] in all educational programs whose faculty prepares students for licensure as registered nurses shall hold a temporary work permit or a current license to practice as a registered nurse in the Commonwealth of Kentucky.

(d) [(e)] The nurse faculty [members] in all educational programs whose faculty prepares students for licensure as registered nurses shall have experience in the clinical or functional area of responsibility [or both] with a minimum of two (2) years [nursing] experience as a registered nurse within the immediate past five (5) years or successful completion of a competency based reentry program acceptable to the board.

(e) [(f)] The nurse faculty [members] in all educational programs whose faculty prepares students for licensure as registered nurses shall have experience in the application of principles in teaching and learning.

Section 2. Faculty for Prelicensure Practical Nurse Programs. (1)(a) [Number and composition.] The faculty shall include but not be limited to a nurse administrator and no less than two (2) nurse faculty (one (1) of whom may also serve as nurse administrator). The faculty may include clinical instructors in the major areas of [clinical] nursing practice. [(a)] The faculty shall be adequate in number and composition to assess, plan [and to] implement and evaluate the program and its curriculum in relation to the [its] stated purpose, philosophy, objectives, and number [and size] of students and classes admitted annually.

(b) The nurse administrator, the [All] nurse faculty and the clinical instructor [members] shall be appointed by and be responsible to the governing institution of the programs of nursing.

[(c) There shall be a minimum of two (2) full-time nurse faculty members employed. The faculty shall be adequate in number to provide for the supervision of students in the clinical practice experience as stated in Section 1(3) of 201 KAR 20:260.]

(2) The nurse administrator shall have the following qualifications:

(a) A baccalaureate or higher degree with a major [bachelor of science degree] in nursing if appointed after July 1, 1980.

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with experience in administration.

(c) Current license or temporary work permit [licensure] to practice as a registered nurse in the Commonwealth of Kentucky.

(3) [Nurse faculty qualifications:] (a) Nurse [New] faculty employed after September 1, 1985 shall have earned a minimum of a baccalaureate degree by January 1, 1992.

(b) Nurse [After January 1, 1992, new] faculty appointed after January 1, 1992 [appointees] shall have a minimum of a baccalaureate degree with a major in nursing.

(c) Nurse faculty shall hold a current license or temporary work permit [licensure] to practice as a registered nurse in the Commonwealth of Kentucky.

(d) Nurse faculty shall have experience [Qualifications] in the clinical or functional are of responsibility with [, or both.

(e)] a minimum of two (2) [three (3)] years of [nursing] experience as a registered [licensed] nurse within the immediate past five (5) years or successful completion of a competency based reentry program acceptable to the board.

[(f) A minimum of one (1) year of registered nursing practice experience during the three (3) years that immediately precede the date of appointment.]

(e) Nurse faculty shall have [(g)] experience in the application of principles in teaching and learning.

Section 3. Evaluation of Registered Nurse Program and Practical Nurse Program Faculty. (1) Evaluation of faculty records. The nurse administrator shall submit to the board the qualifications of nurse faculty and clinical instructors [members] upon appointment.

(a) Official college transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing. If standards are not met, the governing institution shall be notified that a new student class may not be enrolled until standards are met. Further, the program of nursing may be subject to conditional approval status in accordance with Section 2(2) of 201 KAR 20:280.

Section 4. Faculty Supervision of Student Clinical Practice. (1) Effective September 1, 1993, the maximum ratio of students to a nurse faculty member or clinical instructor in the clinical area shall be ten (10) to one (1).

(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(3) The educational preparation of the clinical instructor shall at least equal the level of the appointing program. Any exception shall be justified to the board.

SUSAN J. HOCKENBERGER, President

APPROVED BY AGENCY: December 3, 1992

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

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1993 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1993, 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville,

Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman

(1) Type and number of entities affected: Faculty members, approximately 750.

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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: N/A

TIERING: Was tiering applied? N/A

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised November 17 [~~July 27~~], 1992, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky 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.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures [~~(Amended 7/17/92)~~]
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	Code of Ethics
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary [~~(Amended 7/17/92)~~]
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services
14.2	Personal Hygiene Items [~~(Amended 7/17/92)~~]
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures [~~(Amended 7/17/92)~~]
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties [~~(Amended 7/17/92)~~]
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines
18.6	Classification Document
18.7	Transfers
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures [~~(Amended 7/17/92)~~]
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program (Added 11/17/92)

20-01-01	Educational Programs
22.1	Privilege Trips [~~(Amended 7/17/92)~~]
25.1	Gratuities [~~(Amended 7/17/92)~~]
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program [~~(Amended 7/17/92)~~]
25.4	Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Advanced Supervision
27-11-01	Intensive Supervision
27-12-01	Supervision: Case Classification
27-12-02	Risk/Needs Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Fur+lough/ Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: November 17, 1992

FILED WITH LRC: November 17, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 28, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 2,926 employees of the Department of Corrections, 10,464 inmates, 14,035 parolees and probationers, and all visitors to state correctional institutions.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered

in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and 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 violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner [~~secretary~~] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised December [~~October~~] 15, 1992, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen (Amended 12/15/92)
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet (Amended 12/15/92)
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access [~~(Amended 10/15/92)~~]
KSR 10-00-11	Unit D - Behavior Problem Control [~~(Amended 10/15/92)~~]
KSR 10-00-13	Unit D - Property Room Access [~~(Amended 10/15/92)~~]
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records [~~(Amended 10/15/92)~~]
KSR 10-01-02	Unit D - General Operational Procedures [~~(Amended 10/15/92)~~]
KSR 10-01-03	Unit D - Inmate Tracking System and Records System [~~(Amended 10/15/92)~~]
KSR 10-01-04	Unit D - Administrative Segregation [~~(Amended 10/15/92)~~]
KSR 10-01-05	Unit D - Disciplinary Segregation [~~(Amended 10/15/92)~~]
KSR 10-01-06	Unit D - Protective Custody [~~(Amended 10/15/92)~~]
KSR 10-01-07	Unit D - Geriatrics [~~(Amended 10/15/92)~~]
KSR 10-01-08	Unit D - Safekeepers [~~(Amended 10/15/92)~~]
KSR 10-01-09	Unit D - Hold Ticket Residents [~~(Amended 10/15/92)~~]
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations (Amended 12/15/92)
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel

KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area (Amended 12/15/92)
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Amended 12/15/92)
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 15, 1992

FILED WITH LRC: December 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 27, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 435 employees of the Kentucky State Reformatory, 1396 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.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 3:070. Attendance.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035.

KRS 151B.035 specifies that the state board promulgate comprehensive regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the regional executive director of the respective school operation.

(3) The appointing authority may require employees to work hours and work days other than normal including but not limited to inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools, regions, or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 [~~100~~] hours. [~~The appointing authority may approve an employee to work over the 100 hour limit in cases of emergency but shall not exceed fifty (50) hours over the maximum.~~]

(2) Compensatory time shall be granted for those working in full-time positions only and who perform duties and responsibilities pertaining only to this full-time position.

(3) Upon separation from state service, employees shall be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

[~~(c) Work days within the employment year when school is not in session.~~

~~(d) Other times when requested in advance and when practicable and approved by the immediate supervisor.~~]

(5) All [~~other~~] certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) [~~Each~~] Full-time employees in the certified and equivalent personnel system except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave [~~Each employee~~] shall be credited on [~~with additional leave upon~~] the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. Only those months for which the employee earned annual leave shall be counted in computing months of total service. [~~Employees serving on a part time basis shall not be entitled to annual leave.~~]

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(b) School-based employees shall take time off during the following times:

1. [~~(a)~~] Spring break.

2. [~~(b)~~] Christmas break except on the four (4) official holidays normally given to state employees.

[~~(c) Work days within the employment year when school is not in session.~~

~~(d) Other times when requested in advance and when practicable and approved by the immediate supervisor.~~]

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual

leave.

(7) Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days.

(8) Employees shall be allowed up to two (2) professional leave days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) Lump sum payment for accumulated annual leave.

(a) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in subsection (5) of this section when separated by proper resignation or retirement.

(b) In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave.

(d) The effective date of the separation shall be the last work day.

(14) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (4) of this section.

(15) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(16) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) [~~Each~~] Employees in the certified and equivalent personnel system, except emergency, per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave [~~up~~]on the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. Only those months for which the employee earned sick leave shall be counted in computing total months of service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay, with the exception of educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or [~~of~~] any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements [~~during the year~~] attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no position available, the statutes pertaining to layoff apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of his sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon

request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) The Department for Adult and Technical Education shall continue to pay the state's contribution toward health and life insurance benefits between June 15 and August 1 for employees whose normal work year consists of ten and one-half (10 1/2) months.

(e) Any employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

a. The name of the donor.

b. The agency or office in which the donor is employed.

c. The position number of the donor.

d. The social security number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency or office in which the donee is employed.

g. The donee position number.

h. The donee Social Security Number.

i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

j. Certification by the donor that this donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.

b. Position number.

c. Social Security number.

d. Employee title.

e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(c) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immedi-

ate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

Section 5. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a part plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. Military Leave: Training Duty and Military Duty. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and this absence shall not be charged to leave.

(1) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(2) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(3) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted this leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioner of Adult and Technical Education may grant a sabbatical leave of absence without pay when requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or any other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. [All] Employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. Employees shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B, shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence. Absence without leave may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: November 18, 1992

FILED WITH LRC: December 11, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 26, 1993, at 10 a.m. in the Workforce Development Cabinet Board Room, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 21, 1993 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: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Beverly Haverstock

(1) Type and number of entities affected: Approximately 1,475 certified and equivalent employees of the Workforce Development Cabinet, Department for Adult and Technical Education under KRS Chapter 151B, personnel system.

(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: Decreases paperwork (no need to acquire commissioner's approval).

(2) Effects on the promulgating administrative body: Approval of compensatory time will be site-based rather than centralized.

(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: Decreased (See (1)(b)).

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative was not require commissioner's approval for accrual of compensatory hours between 100 and 200. Agency desired to allow site-based managers to approve compensatory time.

(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: This proposed amendment makes format changes and eliminates duplicative language. The substantive change eliminates the need for securing commissioner's approval for earning compensatory time from 100 to 200 hours.

TIERING: Is tiering applied? No. Accumulation of compensatory time must be the same for all certified and equivalent employees.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 6:060. Attendance.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specified that the state board promulgate administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The appointing authority may require employees to work hours and work days other than normal if it is in the best interest of the agency. The employee shall be required to give reasonable notice in advance of absence from a work station. Employees shall be given as much advance notice as possible when schedules are changed.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis subject to the provisions of the Fair Labor Standards Act and the Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 [~~100~~] hours. [~~The commissioner may authorize additional compensatory time as necessary, but in no case shall an employee exceed 200 hours.~~]

(2) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(3) All unclassified employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(4) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) [~~Each~~] Full-time employees in the unclassified service except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave [~~Each employee~~] shall be credited [~~with additional leave up~~]on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS Chapter 151B, Section 16. Only those months for which the employee earned annual leave shall be counted in computing months of total service. [~~Employees serving on a part-time basis shall not be entitled to annual leave.~~]

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

[~~However,~~] Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority be charged against annual leave.

(6) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(7) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(8) Employees shall be allowed sufficient leave days as determined by the commissioner for the purpose of continuing staff development; i.e., participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (5) of this section.

(14) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) [~~Each~~] Employee in the unclassified system, except per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave [~~up~~]on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS [~~Chapter~~] 151B.090 [~~, Section 16~~].

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or [~~of~~] any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements [~~during the year~~] attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these [~~such~~] benefits.

(d) Any employee who leaves the unclassified service on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all of this [~~such~~] excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. [~~Such~~] Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

a. The name of the donor.

b. The agency or office in which the donor is employed.

c. The position number of the donor.

d. The Social Security Number of the donor.

e. The name of the employee to which leave is being donated.

f. The agency or office in which the donee is employed.

g. The donee position number.

h. The donee Social Security Number.

i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

j. Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.

b. Position number.

c. Social Security Number.

d. Employee title.

e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(c) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

Section 5. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a part plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This [~~Such~~] absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted such leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted such leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing that he is being placed on leave without pay and of the reasons therefor. If this [~~such~~] investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of this [~~such~~] leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: November 18, 1992

FILED WITH LRC: December 11, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 26, 1993, at 10 a.m. in the Workforce Development Cabinet Board Room, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 21, 1993 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: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Beverly Haverstock

(1) Type and number of entities affected: Approximately 37 unclassified employees of the Workforce Development Cabinet, Department for Adult and Technical Education under KRS Chapter 151B, personnel system.

(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: Decreases paperwork (no need to acquire commissioner's approval).

(2) Effects on the promulgating administrative body: Approval of compensatory time will be site-based rather than centralized.

(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: Decreased (See (1)(b)).

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative was not require commissioner's approval for accrual of compensatory hours between 100 and 200. Agency desired to allow site-based managers to approve compensatory time.

(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: This proposed amendment makes format changes and eliminates duplicative language. The substantive change eliminates the need for securing commissioner's approval for earning compensatory time from 100 to 200 hours.

TIERING: Is tiering applied? No. Accumulation of compensatory time must be the same for all unclassified employees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

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

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 identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This administrative regulation is being amended to allow storm sewers in sizes of ten (10) inches and larger. Originally the industry did not recognize sizes over eight (8) inches for this use but has recently applied the same standard to the larger size. [~~This amendment was approved by the Plumbing Code Committee and the Board of Housing to allow smaller homes, particularly those built for Habitat, to use a four (4) inch combination storm and sanitary sewer which is adequate.~~]

Section 1. Independent System. The drainage and plumbing system of new building and of new work installed in an existing building shall be separate and independent of other buildings except as outlined in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. Excavations made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) If possible, the sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. Sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least a three (3) foot cover unless constructed of cast iron piping. If less than a three (3) foot cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in conformance with the State Plumbing Code.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as ASTM F-891, cellular core ABS produced and labeled as ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82 or PVC ribbed pipe produced and labeled as ASTM 795.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger shall be either cast iron, aluminum, Schedule 40 ABS or PVC DWV pipe, vitrified clay or concrete conforming to appropriate commercial specifications [~~standards~~] with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,644	1,645 to 2,466	2,467 to 3,702	3,703 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

Section 13. House Sewer in Undisturbed or Filled Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The sumps shall automatically discharge.

Section 18. Ejectors, Vented. Ejectors shall be vented with a three (3) inch vent. Fixtures or appliances connected to an ejector shall be vented in accordance with other sections of this administrative regulation.

Section 19. Ejector Power: Motors, Compressors, Etc. Motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall be used. The ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. Roofs, paved areas, courts, and courtyards shall be drained into a storm water system or a combined sewerage system, but shall not be drained into sewers intended for sewage only. If drains are connected to a combined sewerage system, they shall be trapped. If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required. Traps shall be set below the frost line or on the inside of the building. If there is no storm or combined sewer available, the line may discharge into a drainage area unless prohibited by the local health department or sewer district. If the drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. If conductors and roof leaders are placed within the walls of a building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. If outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Along public driveways, without side walks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe. A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: November 19, 1992
FILED WITH LRC: December 8, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 26, 1993 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1993, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiered in that new material (40 ABS or PVC DWV pipe) can now be used for storm sewers.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 14:010. Emergency medical services (EMS) personnel funding assistance.

RELATES TO: KRS 211.950 to 211.958

STATUTORY AUTHORITY: KRS 211.952

NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for payment of salaries of trained emergency medical services personnel to maintain essential services in accordance with KRS 211.956 and to provide for ambulance and equipment funding for volunteer services pursuant to KRS 211.958.

Section 1. Definitions. As used in this administrative regulation relating to emergency medical services, the following terms shall have the meaning set forth in this section unless the context requires otherwise:

(1) "Ambulance service" means a service licensed by the cabinet to provide emergency health care ground transportation services which meets the requirements of 902 KAR 20:117, Sections 2 through 8, and which is operated by or under contract to the applicant.

(2) "Applicant" means a city or county government.

(3) "Cabinet" means the Cabinet for Human Resources.

(4) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 211.954 and 211.956.

(5) "Emergency volunteer run" means an emergency response by an ambulance service to provide medical care as a result of an injury or medical emergency where the ambulance is staffed solely by volunteers.

(6) "General fund" means revenue derived by a city or county government, but excluding both fees for ambulance services and monies from the EMS matching fund which may be deposited into the city or county general fund.

(7) "Personnel costs" means salaries paid for ambulance service personnel including fringe benefits such as employer contributions for Social Security, medical insurance and retirement.

(8) "Volunteer" means a certified emergency medical technician (EMT) who does not receive a salary from the ambulance service or the applicant for making ambulance runs or performing as an EMT.

Section 2. [1.] Application for Personnel Funding Assistance. (1) In accordance with KRS 211.956, an applicant [~~Any city or county may apply to the Cabinet for Human Resources with the assistance of the applicable emergency medical services system~~] for funding assistance to maintain an adequate number of trained personnel to staff an [~~its~~] ambulance service operated:

(a) By the applicant; or

(b) Under contract to the applicant [~~in accordance with KRS 211.956~~].

(2) The application shall include:

(a) The total ambulance service operating budget;

(b) Estimated receipts [~~, a summary~~] of the total city or county general fund budget;

(c) [~~, and~~] Itemization of sources and amounts of city or county revenues appropriated for [~~utilized in~~] the provision of ambulance services; and

(d) Documentation of salaries and training levels of ambulance service personnel.

(3)(a) An applicant shall use the application form provided by [~~Application forms may be obtained from~~] the Cabinet for Human Resources.

(b) The applicant form "Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.958" (rev. 7/92), is incorporated by reference and may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. [2.] Funding Criteria and Allocation. (1) In order to encourage cities and counties to financially support local ambulance services, EMS matching funds shall be awarded under KRS 211.956 to cities and counties in which more than five (5) percent of general funds as budgeted and reported to the Department of Local Government is allocated for ambulance service.

(2) The amount of EMS matching funds for which an applicant may be eligible shall not exceed $40,000 and shall be the lesser of:

(a) The amount of general funds allocated for ambulance service in excess of five (5) percent of total general funds; or

(b) Fifty (50) percent of ambulance service personnel costs.

(3) If total eligibility for EMS matching funds exceeds the amount of EMS matching funds available, EMS matching funds shall be prorated by dividing total EMS matching funds by total eligible funds to obtain a percentage. That percentage, applied to the amount for which each applicant is eligible, shall determine the actual amount which shall be awarded to each applicant.

Section 4. Equipment Funding for Volunteer Services. (1) As provided for in KRS 211.958, allocations from the matching fund program up to a maximum of $40,000 may be made to cities or counties to increase the amount of money available under KRS 211.954 for purchase of vehicles and equipment where:

(a) At least fifty (50) percent of emergency ambulance runs are emergency volunteer runs made by volunteers; and

(b) The applicant meets the funding criteria outlined in Sections 3(1) through (3) and 4 of this administrative regulation.

(2) Equipment purchased from this fund shall meet the same definition, priorities, criteria, standards, and recordkeeping requirements for equipment purchased pursuant to 902 KAR 14:020. [~~To qualify for funding assistance pursuant to KRS 211.956, the applicant city or county must budget a minimum of five (5) percent of its available general fund dollars as budgeted and reported to the Department for Local Government toward the cost of ambulance service operations, except that revenues raised by an ambulance service district tax may be applied to reduce the amount of general funds necessary on a one for one direct reduction basis.~~

~~(1) The maximum amount of matching funds for which the city or county may qualify shall be determined as follows:~~

~~(a) The first five (5) percent of city or county general funds~~

~~budgeted and any other funds earmarked for ambulance service including the balance of ambulance service district tax revenues not applied to meet the five (5) percent general fund requirement, shall be deducted from the total ambulance service operating budget.~~

~~(b) The percentage of actual personnel costs to the total ambulance service budget shall be determined, and such percentage applied to the total ambulance service operating cost remaining after deductions in paragraph (a) of this subsection.~~

~~(c) The city or county shall be eligible for no more than fifty (50) percent of the amount derived from paragraphs (a) and (b) of this subsection up to a maximum of $40,000 per county, including grants to cities within counties.~~

~~(2) An eligible applicant shall receive a matching portion of available state funds prorated on the basis of total population served by all eligible applicants. Total per capita grants shall be not less than eighty (80) percent of the amount of General Fund appropriation budgeted for salary payment assistance.~~

~~(3) Up to ten (10) percent of the amount budgeted may be allocated by the cabinet to eligible applicants for special needs based on utilization rates, the number of emergency transports, or upon determination of a financial emergency of an eligible applicant that would drastically alter or eliminate essential services without special assistance from the state.~~

~~(4) Allocations from the personnel fund may be made to cities or counties for purchase of vehicles and equipment where at least fifty (50) percent of ambulance personnel are volunteers (noncompensated) or in which at least fifty (50) percent of the ambulance services are operated by volunteers on a twenty four (24) hour basis. Funding for equipment shall be consistent with the provisions of KRS 211.958.~~

~~Section 3. Matching Requirement. The matching requirement of fifty (50) percent for personnel salaries shall be budgeted from city or county general funds or from ambulance district tax revenues only.~~]

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 1, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1993 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: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Robert P. Calhoun

(1) Type and number of entities affected: All 120 county governments and cities within counties which provide or contract for ambulance service.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings with this amendment.

1. First year: There are no direct or indirect costs or savings with this amendment.

2. Continuing costs or savings: There are no direct or indirect costs or savings with this amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This amendment excludes ambulance service fees which have been deposited into the local general fund from being used as matching funds.

(b) Reporting and paperwork requirements: Applicants must use the cabinet's application form, account for expenditures, and inventory equipment costing $300.

(2) Effects on the promulgating administrative body: This amendment should speed up the fund allocation process.

(a) Direct and indirect costs or savings: Less staff time should be required for processing applications, resulting in less direct and indirect costs.

1. First year: Since the application process is being changed, costs may be higher the first year.

2. Continuing costs or savings: As the allocation process is speeded up, there should be continued savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There should be less paperwork required since equipment costing less than $300 no longer has to be inventoried.

(3) Assessment of anticipated effect on state and local revenues: Ambulance service fees deposited into the local general fund may no longer be used as local matching funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment conforms to changes made in KRS 211.956 and to KRS Chapter 13A. No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation overlaps with KRS 211.958 and 211.954 and 902 KAR 14:020.

(a) Necessity of proposed regulation if in conflict: There is overlapping with 902 KAR 14:020, but there is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is overlapping with 902 KAR 14:020, but there is no conflict.

(6) Any additional information or comments:

TIERING: Is tiering applied? Yes. EMS matching funds will be awarded based on the amount of local general funds allocated to ambulance services and total ambulance service personnel costs. Volunteer services may convert personnel funds for equipment.

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. Cities and counties that provide or contract for ambulance service.

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect the ambulance service provided by or contracted for by the local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the ambulance service provided by or contracted for by a city or county government.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation is intended to encourage local governments to support ambulance service by

providing matching funds for local general funds allocated for ambulance service personnel and equipment for volunteer services. Matching funds are provided when local governments allocate more than five percent of their local general funds for ambulance service.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 14:020. Allocation of funding assistance for purchase of ambulances and [~~EMS~~] equipment for emergency medical services (EMS).

RELATES TO: KRS 211.950 to 211.958
STATUTORY AUTHORITY: KRS 211.952
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance to city and county [~~local~~] governments for the purchase of ambulances and equipment to maintain essential EMS services in accordance with KRS 211.954.

Section 1. Definitions. As used in this administrative regulation relating to emergency medical services, the following terms shall have the meaning set forth in this section unless the context requires otherwise:

(1) "Ambulance" means a vehicle as defined in KRS 211.950(1).

(2) "Ambulance service" means a service licensed by the cabinet to provide emergency health care ground transportation services which meets the requirements of 902 KAR 20:117, Sections 2 through 8, and which is operated by or under contract to the applicant.

(3) "Applicant" means a city or county government.

(4) "Cabinet" means the Cabinet for Human Resources.

(5) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 211.954 and 211.956.

(6) "Equipment" means nonexpendable and nonconsumable items which have a per unit cost of $100 or more and which have an expected useful life of one (1) year or more.

(7) "Local funds" mean locally generated revenue excluding EMS matching funds awarded by the cabinet.

Section 2. [~~1.~~] Application for Funding Assistance. (1) An applicant [~~Any city or county~~] may apply to the cabinet [~~for Human Resources with the assistance of the applicable emergency medical services system~~] for funding assistance toward the purchase of an ambulance or [~~for~~] essential equipment to be used solely by an ambulance service operated by or under contract to the applicant pursuant to [~~in the operation of its respective ambulance service in accordance with~~] KRS 211.954.

(2) The application shall include:

(a) The total ambulance service operating budget;

(b) Itemization of sources and amounts of funds utilized in the provision of emergency medical services; and

(c) A justification for each ambulance or item of equipment for which funding assistance is requested.

(3)(a) An applicant shall use the application form provided by [~~Application forms may be obtained from~~] the cabinet.

(b) The applicant form "Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.958" (rev. 7/92), which has an effective date of July 15, 1992, is incorporated by reference and may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. Funding Criteria. [~~2. Ambulance Criteria; Equipment.~~] (1) Except as provided for in KRS 211.958, the maximum amount of EMS matching funds which a county, including cities within a county, may receive from the fund for equipment shall be $25,500 per year.

(2) To qualify for funds from the EMS matching funding program, an applicant shall:

(a) Match funding assistance from the EMS matching fund program with at least fifty (50) percent local funds;

(b) Provide assurances that ambulances and equipment purchased with assistance from this fund shall be used solely for the purposes contained in the application and approved by the cabinet;

(c) Submit to the cabinet documentation of actual expenditures from the EMS matching fund; and

(d) Agree to refund to the cabinet EMS matching funds which:

1. Remain unexpended one (1) year from the date of the award; or

2. Were not utilized for the approved purpose.

(3) [~~All~~] Ambulances purchased pursuant to this regulation shall meet the requirements of 902 KAR 20:117, Section 5(3) related to emergency health care ground transportation services. [~~Federal Ambulance Design Criteria (GSA-KKK-A-1822).~~]

(4) [~~(2) Major items of~~] Equipment fundable under this administrative regulation shall be determined by the cabinet pursuant to KRS 211.954, Section 2(1) and may include such items as:

(a) Basic life support equipment required by 902 KAR 20:117, Section 7, which meets the definition of equipment in Section 1(6) of this administrative regulation;

(b) Advanced life support (ALS) equipment required by 902 KAR 20:117, Section 11, which meets the definition of equipment in Section 1(6) of this administrative regulation;

(c) Communication equipment including base stations, mobile radios and portable radios; and

(d) Extrication equipment. [~~include, but need not be limited to:~~
~~(a) Any essential equipment required by 902 KAR 20:115;~~
~~(b) Mobile radio, UHF or VHF;~~
~~(c) Portable radio, UHF or VHF;~~
~~(d) Pagers for on call personnel;~~
~~(e) Portable infant transport incubators;~~
~~(f) Portable monitor/defibrillator, complete;~~
~~(g) Antishock trousers;~~
~~(h) "Jaws of Life."~~]

Section 4. [~~3.~~] Title, Use, and Disposition of Ambulances and Equipment. (1) Legal title to ambulances and equipment purchased pursuant to this regulation shall vest in the applicant [~~grantee~~].

(2) The applicant [~~grantee~~] shall:

(a) Maintain property records for each ambulance and item of equipment having a value of $300 or more purchased with EMS matching [~~for which~~] funds; [~~were provided by the Cabinet for Human Resources~~] and

(b) [~~shall~~] Notify the cabinet of any changes in its intended use or current status.

(3) [~~In the event~~] The applicant shall obtain prior approval from the cabinet [~~grantee desires~~] to dispose of an ambulance or item of equipment purchased with EMS matching fund assistance having a residual value of at least $300.

(4) The cabinet may require that proceeds from the sale of ambulances or equipment purchased with EMS matching fund assistance which have a residual value of at least $300 be prorated and returned to the cabinet in the same ratio as the original funding assistance. [~~, prior approval shall be obtained from the cabinet.~~

~~Section 4. Priorities for Allocation of Funds. Priorities for allocation~~

~~of funds for ambulances and equipment shall be based on the following criteria:~~

~~(1) First priority - cities or counties which demonstrate need for replacement of essential equipment and/or ambulances which are totally inoperable, or at least seven (7) years old or driven in excess of 70,000 miles and in poor condition, to maintain essential ambulance services; and cities or counties in need of new equipment or ambulances to establish an essential ambulance service where none exists to cover the proposed service area.~~

~~(2) Second priority - cities or counties which document the need for additional equipment and/or ambulances to provide adequate coverage within the designated service area.~~

~~(3) Third priority - cities or counties in which a new ambulance service is being established to fulfill a documented need for additional service.~~]

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: December 1, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1993 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: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Robert P. Calhoun

(1) Type and number of entities affected: All 120 county governments and cities within counties which provide or contract for ambulance service.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings with this amendment.

1. First year: There are no direct or indirect costs or savings with this amendment.

2. Continuing costs or savings: There are no direct or indirect costs or savings with this amendment.

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: Applicants must use the cabinet's application form, account for expenditures, and inventory equipment costing $300.

(2) Effects on the promulgating administrative body: This amendment should speed up the fund allocation process.

(a) Direct and indirect costs or savings: Less staff time should be required for processing applications, resulting in less direct and indirect costs.

1. First year: Since the application process is being changed, costs may be higher the first year.

2. Continuing costs or savings: As the allocation process is speeded up, there should be continued savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There should be less paperwork required since equipment costing less than $300 no longer has to be inventoried.

(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: This amendment conforms to changes made in KRS 211.954 and to KRS Chapter 13A. No alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation overlaps with KRS 211.958 and 211.956 and 902 KAR 14:010.

(a) Necessity of proposed regulation if in conflict: There is overlapping with 902 KAR 14:010, but there is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is overlapping with 902 KAR 14:010, but there is no conflict.

(6) Any additional information or comments:

TIERING: Is tiering applied? Yes. EMS matching funds will be awarded based on the amount of local general funds allocated to ambulance services. Volunteer services may convert personnel funds for equipment.

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. Cities and counties that provide or contract for ambulance service.

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect the ambulance service provided by or contracted for by the local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the ambulance service provided by or contracted for by a city or county government.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation is intended to encourage local governments to support ambulance service by providing matching funds for local general funds allocated for ambulance service equipment.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(Proposed Amendment)

902 KAR 55:040. Exempt over-the-counter preparations.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(4) and 218A.090(4)(i) authorizes the Cabinet for Human Resources to exclude preparations that may be lawfully sold over the counter (without prescription) from the provisions relating to controlled substances of KRS Chapter 218A. The purpose of this regulation is to exclude certain over-the-counter preparations from the provisions

of the Kentucky Controlled Substances Act.

Section 1. Excluded [~~Exempt~~] Over-the-counter Products [~~Barbiturate Combination Preparations~~]. Any compound, mixture or preparation containing any nonnarcotic substance which is excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1992 [~~1991~~] edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, is excluded from the provisions of KRS Chapter 218A, the Controlled Substances Act. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 is on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and is available for public inspection and copying Monday through Friday 8 a.m. - 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: November 4, 1992
FILED WITH LRC: November 25, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1993 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: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

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

1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation merely updates the list of substances exempt under KRS Chapter 218A.

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 is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency because the amendment updates a list.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate 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: None

TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; and 21 USC 811(g)(1) and 21 CFR 1308.22.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(4) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241; 21 USC 811(g)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(Proposed Amendment)

902 KAR 55:045. Exempt prescription preparations.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by regulation. The purpose of this regulation is to delete and exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been deleted and exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products [~~Stimulant or Depressant Combination Preparations~~]. Any compound, mixture or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1992 [~~1991~~], edition of the Code of Federal Regulations, (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.32, Excepted Prescription Products, incorporated by reference, exempted from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C.

20408. A copy of 21 CFR 1308.32 is on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying Monday through Friday 8 a.m. to 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: November 4, 1992

FILED WITH LRC: November 25, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 21, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1993 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: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

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

1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation merely updates the list of substances exempt under KRS Chapter 218A.

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 is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency because the amendment updates a list.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate 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: None

TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; and 21 CFR 1308.22.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241; and 21CFR 1308.32.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 1992

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:001 Definitions.

RELATES TO: KRS 164.740, 164.744(1), 164.748(1), (3) (14), 164.753(2), 164.766, 8 USC 1101(a)(22), 10 USC Chapters 2, 106, 107, 20 USC 421-429, 1070a, 1070b, 1070c, 1078, 1078-1, 1078-2, 1078-3, 1087a,1087aa-1087ii, 1095-1, 37 USC Chapter 2, 38 USC Chapters 30, 31, 32, 35, PL 97-376 §156, PL 96-342 §903

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal act. This regulation sets forth general definitions applicable to one (1) or more regulations in this chapter.

Section 1. The following definitions apply to all authority insured student loan programs:

(1) "Academic year" means:

(a) A period of at least thirty (30) weeks of instructional time in which a full-time student is expected to complete at least twenty-four (24) semester hours or thirty-six (36) quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(b) At least 900 clock hours at a participating institution which measures academic progress in clock hours.

(2) "Applicable interest rate" means the maximum annual interest rate that a lender may charge on an authority insured loan.

(3) The definition of "authority" is governed by KRS 164.740(1).

(4) "Borrower" means a student or parent to whom a federal Stafford loan, a federal SLS loan, a federal PLUS loan, or a federal Consolidation loan is made.

(5) "Clock hour" means the equivalent of:

(a) A fifty (50) to sixty (60) minute class, lecture or recitation;

(b) A fifty (50) to sixty (60) minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty (60) minutes of preparation in a program of study by correspondence.

(6) "College work study program (CWS)" means the part-time employment program for students authorized by Part C of the federal Act (42 USC §2751 - 2756b).

(7) "Co-maker" means one (1) of two (2) individuals who are joint borrowers on a federal PLUS Program loan and who are equally liable for repayment of the loan.

(8) "Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for:

(a) 180 days for a loan repayable in monthly installments; or

(b) 240 days for a loan repayable less frequent installments.

(9) "Defense loan" means a loan made before July 1, 1972, under Title II of the National Defense Education Act (20 USC 421-429).

(10) "Dependent student" means any student who does not qualify as an independent student (see independent student).

(11) "Direct loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(12) "Disbursement" means the transfer of loan proceeds by a participating lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

(13) The definition of "disposable pay" is governed by Section 488A(d) of the federal Act (20 USC 1095-1).

(14) The definition of "eligible student" is governed by KRS 164.740(7).

(15) The definition of "endorser" is governed by KRS 164.740(8).

(16) "Enrolled" means the status of a student who:

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the participating institution he or she is attending; or

(b) Has been admitted into a correspondence study program and has submitted one (1) lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

(17) "Escrow agent" means the authority acting in a capacity in which it agrees to receive the proceeds of an insured student loan as an agent of a participating lender for the purpose of transmitting those proceeds to the borrowers.

(18)(a) "Estimated cost of attendance" means, for loans disbursed prior to July 1, 1993, the tuition and fees applicable to a student, plus the participating institution's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses shall not include the purchase of a motor vehicle. The expenses may include, but are not limited to, reasonable transportation and commuting costs, costs for room, board, books, and supplies, the insurance premium for the loan, and if applicable, the origination fee for the loan.

(b) "Estimated cost of attendance" means, for loans disbursed on or after July 1, 1993.

1. Tuition and fees normally assessed a student carrying the same academic workload as determined by the participating institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

2. An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the participating institution on at least a half-time basis, as determined by the participating institution at which such student is enrolled;

3. An allowance (as determined by the participating institution) for room and board costs incurred by the student, which shall be not less than $1,500 for a student without dependents residing at home with parents, the amount normally assessed most of the institution's residents for room and board for students without dependents residing in institutionally owned or operated housing, or an allowance of not less than $2,500 for all other students based on the expenses reasonably incurred by the students for room and board;

4. For a student enrolled in an academic program of study abroad approved for credit by the student's home institution, reasonable costs associated with the study (as determined by the participating institution at which such student is enrolled);

5. For a student with one (1) or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that the allowance shall not exceed the reasonable cost in the community in which the student resides for the kind of care provided, and the period for which dependent care is required includes, but is not limited to, class time, study time, field work, internships, and commuting time;

6. For a student with a disability, an allowance (as determined by the participating institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

7. For a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, except that the financial aid officer at a participating institution shall

reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of telecommunication, but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment; and

8. For a student placed in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the participating institution at which such student is enrolled).

(19) "Estimated financial assistance" means the estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from federal, state, institutional or other scholarship, grant, work, or loan programs, including but not limited to:

(a) Any Social Security benefits paid to, or on account of, the student that would not be paid if he or she were not a student;

(b) Any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits received under United States Code Title 10 chapters 2, 106, and 107; Title 37 chapter 2; Title 38 chapters 30, 31, 32, and 35; PL 97-376, section 156; and PL 96-342, section 903; and

(c) Other scholarship, grant, or loan assistance;

(d) The estimated amount of other federal student financial aid, including but not limited to Pell Grants and assistance under the SEOG, federal work-study, and federal Perkins Loan programs, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(e) Loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

(20) The definition of "federal act" is governed by KRS 164.740(9).

(21) "Federal Consolidation Loan Program" means the loan program authorized by section 428C of the federal Act.

(22) "Federal PLUS Program" means the loan program authorized by section 428B of the federal Act.

(23) "Federal Supplemental Loans for Students (SLS) Program" means the loan program authorized by section 428A of the federal Act and formerly called the ALAS Program.

(24) "Foreign school" means a school not located in a state.

(25) "Full-time student" means:

(a) A student enrolled in a participating institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or social studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational program of study (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than twenty-four (24) clock-hours per week or twelve (12) semester or quarter hours of instruction, or its equivalent.

(26) "Grace period" means the period that begins on the day on which a federal Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating institution and ends on the day that the repayment period begins. See also "postdeferment grace period".

(27) "Graduate or professional student" means a student who:

(a) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(b) Has completed the equivalent of at least three (3) years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(c) Is not receiving aid under Title IV of the federal Act as an undergraduate student for the same period of enrollment.

(28) "Guarantee agency" means a state or private nonprofit organization that has an agreement with the secretary to administer a loan guarantee program under the federal Act.

(29) "Guaranteed Student Loan (GSL) Program" means the student loan program, which has been redesignated as the Robert T. Stafford Federal Student Loan program, authorized by Part B of Title IV of the federal Act.

(30) "Half-time student" means a student who is enrolled in a participating institution, is carrying an academic workload that amounts to at least one-half (1/2) the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

(31) "Holder" means a participating lender in possession of authority insured student loan.

(32) "Income Contingent Loan (ICL) Program" means the student loan program authorized by Part D of the federal Act (20 USC 1087a, et seq.).

(33) "Independent student" means any individual who:

(a) Is twenty-four (24) years of age or older by December 31 of the award year;

(b) Is an orphan or ward of the court;

(c) Is a veteran of the Armed Forces of the United States;

(d)1. Is a graduate or professional student; and

2. For award years beginning prior to July 1, 1993, declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents for the first calendar year of the award year;

(e)1. Is a married individual; and

2. For award years beginning prior to July 1, 1993, declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents for the first calendar year of the award year;

(f) Has legal dependents other than a spouse;

(g) For award years beginning prior to July 1, 1993, is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes by his or her parents for the two (2) calendar years preceding the award year and demonstrates total self-sufficiency for those two (2) years by total annual resources of at least $4,000; or

(h) Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(34) The definition of "insured student loan" is governed by KRS 164.740(12).

(35) "Legal guardian" means an individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

(36) The definition of "loan" is governed by KRS 164.740(13).

(37) The definition of "loan guarantee" is governed by KRS 164.740(14).

(38) "National Defense Student Loan program" means the student loan program authorized by Title II of the National Defense Education Act of 1958 (20 USC 421-429).

(39) "National Direct Student Loan (NDSL) Program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) between July 1, 1972, and October 16, 1986.

(40) "National of the United States" means:

(a) A citizen of the United States; or

(b) As defined in the Immigration and Nationality Act, 8 USC 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(41) "One (1) year training program" means a program which is at least:

(a) Twenty-four (24) semester or trimester hours or units, or thirty-six (36) quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) 900 clock hours in a correspondence program.

(42) "Origination relationship" means a special relationship between a participating institution and a lender, in which the lender delegates to the institution, or to an entity or individual affiliated with the institution, substantial functions or responsibilities normally performed by lenders before making loans.

(43) "Parent" means a student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

(44) The definition of "participating institution" is governed by KRS 164.740(15).

(45) The definition of "participating lender" is governed by KRS 164.740(16).

(46) "Pell Grant program" means the grant program authorized by subpart 1 of Part A of the federal Act (20 USC 1070a).

(47) "Perkins loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under the National Direct Student Loan program.

(48) "Perkins Loan program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) after October 16, 1986.

(49) "Postdeferment grace period" means for an insured student loan made prior to October 1, 1981, a period of six (6) consecutive months being on the day following the last day of an authorized deferment period.

(50) "Recognized equivalent of a high school diploma" means:

(a) A general education development (GED) certificate; or

(b) A state certificate received by a student after the student has passed a state authorized examination which the state recognizes as the equivalent of a high school diploma.

(51) "Regular student" means a person who is enrolled or accepted for enrollment at a participating institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

(52) "Robert T. Stafford Federal Student Loan program" means the student loan program authorized by Part B of the federal Act, consisting of subsidized and unsubsidized loans authorized by sections 428 and 428H of the federal Act, and includes loans previously made under the guaranteed student loan program.

(53) The definition of "secretary" is governed by KRS 164.740(20).

(54) "Six (6) month training program" means:

(a) A program which is at least:

1. Sixteen (16) semester or trimester hours or units, or twenty-four (24) quarter hours or units, at an institution using credit hours or units to measure academic progress;

2. 600 clock hours of supervised training at an institution using clock hours to measure academic progress; or

3. 600 clock hours in a correspondence program;

(b) A program which the secretary determines is at least a six (6) month training program on the basis of:

1. A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)1 through 3 of this subsection; and

2. The secretary's ratification of that accrediting agency's determination.

(55) "State" means each state of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(56) "State Student Incentive Grant (SSIG) program" means the grant program authorized by subpart 4 of Part A of the federal Act (20 USC 1070c, et seq.).

(57) "Subsidized Federal Stafford Student loan" means a loan qualifying for payment of an interest subsidy on behalf of the borrower under section 428 of the federal Act.

(58) "Supplemental Educational Opportunity Grant (SEOG) program" means the grant program authorized by subpart 3 of Part A of the federal Act (20 USC 1070b, et seq.).

(59) "Totally and permanently disabled" means the inability of a borrower to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(60) "Undergraduate student" means a student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four (4) academic years, or is up to five (5) academic years in length and shall be designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four (4) academic years.

(61) "Unsubsidized federal Stafford student loan" means a student loan authorized under section 428H of the federal Act.

(62) "U.S. citizen or national" means:

(a) A citizen of the United States; or

(b) A person defined in the Immigration and Nationality Act (8 USC 1101, (a)(22)) who, though not a citizen of the United States, owes permanent allegiance to the United States.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: In the current academic year, it is estimated that 55,915 student loans to eligible borrowers will be insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet the costs of attendance at over 6600 eligible educational institutions.

(a) Direct and indirect costs or savings to those affected: None. This regulation merely defines terms used in other regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Consequently, the defined terms do not, themselves, impose a cost or create a savings associated with this regulation.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None. This regulation merely defines terms used in other regulations in this chapter, and

therefore does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None. This regulation merely defines terms used in other regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Consequently, the defined terms do not, themselves, impose a cost or create a savings associated with this regulation.

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None. This regulation merely defines terms used in other regulations in this chapter, and therefore does not impose any 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: This regulation merely defines terms used in other regulations in this chapter. KRS 13A.222(4)(e) permits an administrative body to promulgate a single regulation to define terms used in several regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682. 11 KAR 3:060 contained a section that defined certain terms.

(a) Necessity of proposed regulation if in conflict: P.L. 102-325, enacted July 23, 1992, reauthorized the federal act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation merely defines terms used in other regulations in this chapter. Therefore, the concept of tiering would not apply to defining terms.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: this administrative regulation requires. This regulation merely defines terms used in other regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Unless superseded by changes in the federal act or altered to conform to drafting requirements of KRS Chapter 13A, all defined terms (other than those indicated as being defined in KRS 164.740) contained in this regulation are restated precisely as they are defined by the Secretary in 34 CFR §668.1 and §682.200.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal act.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation does not impose stricter or different requirements or responsibilities than those imposed by the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:015. Borrower eligibility.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 20 USC §1078, §1078-1, §1078-2, §1078-3, §1087kk

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. The regulation is necessary to prescribe the eligibility of borrowers and students who would benefit from authority insured student loans.

Section 1. Student Eligibility. Except as provided in Section 12 of this administrative regulation, a student is eligible to borrow or benefit from assistance for any academic year, whether or not the student has already obtained a first baccalaureate degree, under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs if the student:

(1)(a) Is a regular student enrolled or accepted for enrollment as at least a half-time student in a degree, certificate, or other eligible program (including a program of study abroad approved for credit by the participating institution at which the student is enrolled) leading to a recognized educational credential at a participating institution; or

(b) Is, for one, consecutive twelve (12) month period, enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a course of study necessary for enrollment in an eligible program; or

(c) Is enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a program at a participating institution necessary for a professional credential or certification from a state that is required for employment as a teacher in an elementary or secondary school in that state;

(2) Is not enrolled in either an elementary or secondary school;

(3)(a) Has a high school diploma or its recognized equivalent; or

(b)1. Is above the age of compulsory school attendance in the state in which the participating institution he or she is attending is located; and

2. Has the ability to benefit from the training offered by that institution, according to the requirements of Section 2 of this administrative regulation;

(4)(a) Is a U.S. citizen or national; or

(b) Provides evidence from the U.S. Immigration and Naturalization Service that he or she:

1. Is a permanent resident of the United States; or

2. Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(c) Is a permanent resident of the Trust Territory of the Pacific Islands;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of Section 3 of this administrative regulation;

(6) Has filed with the participating institution a statement of selective service registration status in accordance with Section 4 of this administrative regulation;

(7) Is a national of the United States, if enrolled or accepted for enrollment in a foreign school; and

(8) Meets the following conditions, if enrolled in a flight school program at a participating institution:

(a) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(b) Has completed ground school training or is taking it concurrently with flight training;

(c) Holds a private pilot's certificate or has sufficient flight hours to qualify for that certificate; and

(d) Holds at least a Class II medical certificate.

Section 2. Students Who Are Not High School Graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs, the student shall meet one (1) of the following standards:

(1)(a) The student shall take an independently administered examination (approved by the secretary on the basis of compliance with standards for development, administration, and scoring as the secretary may prescribe in regulations), and shall achieve a score, specified by the secretary, demonstrating that the student can benefit from the education or training being offered; or

(b) The student shall be determined as having the ability to benefit from the education or training in accordance with a process that a state may prescribe, which shall be effective for purposes of this section six (6) months after the date the process is submitted to the secretary, unless the secretary disapproves the process, taking into account the effectiveness of the process in enabling students without high school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing the process, and the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions;

(2) Enrollment prior to July 1, 1991. A student who was admitted to a participating institution for a period of enrollment beginning prior to July 1, 1991 and continues to be enrolled as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs only if the student:

(a)1. Before admission, was administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

2. Demonstrated that aptitude on that test; or

(b) Receives a GED before the earlier of the student's certification or graduation from his or her program of study, or the completion of the student's first academic year of that program of study; or

(c) Enrolls in and successfully completes a remedial or developmental educational program of not more than one (1) academic year that is prescribed by the institution, if the student is counseled before admission, or does not demonstrate the aptitude necessary to complete successfully the educational program to which he or she has applied on the test described in paragraph (2)(a)1 of this section.

Section 3. Satisfactory Progress. For the purpose of Section 1(5) of this administrative regulation, a student shall be considered to be maintaining satisfactory progress if, for a student who has not received assistance under the subsidized Robert T. Stafford Federal Student Loan, the federal PLUS, or the federal SLS programs, for a period of enrollment beginning before July 1, 1987, the participating institution:

(1) Reviews the student's academic progress at the end of each academic year, or its equivalent, as determined by the institution; and

(2) Determines that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that:

(a) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(b) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by:

1. The death of a relative of the student;

2. An injury or illness of the student; or

3. Other special circumstances; and

(3) Determines, in the case of a student who was not making satisfactory academic progress in accordance with subsection (2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

Section 4. Statement of Registration Status. (1) Unless the participating institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service, a student who is applying for a subsidized or unsubsidized federal Stafford loan or a federal SLS loan, or who will benefit from a loan under the federal PLUS program, shall file a statement of registration status with the participating institution.

(2) Until a student files a statement of registration status required pursuant to subsection (1) of this section, the participating institution shall not, for any period of instruction:

(a) Disburse funds to the student under any authority insured student loan program; or

(b) Certify the institutional portion of the authority insured student loan application.

(3) In the statement of registration status, the student shall certify either that he or she is registered with Selective Service or that, for a specified reason, he or she is not required to be registered. This requirement shall not apply to a student who is:

(a) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

1. The Citadel, Charleston, South Carolina;

2. North Georgia College, Dahlonega, Georgia;

3. Norwich University, Northfield, Vermont; or

4. Virginia Military Institute, Lexington, Virginia;

(b) A commissioned officer of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(c) Unable to present himself or herself for registration for reasons beyond his or her control, such as being hospitalized, incarcerated, or institutionalized.

(4)(a) Except as provided in paragraph (b) of this subsection, a student required under subsection (1) of this section to file a statement of registration status shall do so once for each academic year. If the student's status under registration law changes during the academic year after he has completed the statement of registration status, the student shall not be required to file a new statement for that year.

(b) A participating institution may waive the requirement that a student file a statement of registration status once for each academic year if:

1. The institution already has on file a statement of registration

status for that student; and

2. The student's status under registration law has not changed since the institution received the most recently filed statement of registration status.

(c) A participating institution which waives the requirement that a student file the statement of registration status is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if:

1. The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

2. The institution had conflicting information about whether the student was required to register, and its determination that the student was not required to register was not reasonable in the light of all available information.

(d) An institution which accepts a statement of registration status from a student is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if the institution:

1. Has information that conflicts with the student's statement; and

2. Its acceptance of the student's representation on the statement regarding his status was not reasonable in light of all the available information.

Section 5. Eligible Borrower. (1) Student borrower. A student is eligible to borrow a subsidized and unsubsidized federal Stafford loan and a federal SLS program loan, if the student:

(a) Meets the requirements of Section 1 of this administrative regulation; and

(b) Provides his or her Social Security number; and

(c) Authorizes the participating institution in writing to pay directly to the holder of the loan that portion of any refund of school charges that is allocable to the loan; and

(d) Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he or she does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e) Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation;

(g) As determined by the participating institution that he or she attends, except as provided in Section 9 of this administrative regulation, has not borrowed:

1. In excess of the annual loan limits under the ICL, subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, or federal SLS programs in the same academic year for which he or she has applied for assistance under any authority insured student loan program; and

2. In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, or federal Consolidation Loan programs;

(h) Is not serving in a medical internship or residency program;

(i) Except for a graduate or professional student:

1. Has received a determination of eligibility or ineligibility for a Pell Grant for the period of enrollment, and, if determined to be eligible, filed an application for a Pell Grant for such enrollment period; or

2. Has filed an application with the Pell Grant processor for the participating institution for the enrollment period, and received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a Pell Grant.

(j) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause;

(k) Meets the additional requirements provided in Sections 9 and 10 of this administrative regulation applicable to the type of loan sought by the student; and

(2) Parent borrower. A parent is eligible to receive a federal PLUS Program loan if the parent:

(a) Is borrowing to pay for the educational costs of a dependent student who meets all of the qualifications set forth in Section 1 of this administrative regulation;

(b) Provides his or her Social Security number;

(c) Meets the qualifications pertaining to citizenship and residency status set forth in Section 1(4) of this administrative regulation;

(d)1. Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he or she does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs; and

2. Except as provided in Section 6 of this administrative regulation, the student for whom a parent is borrowing does not owe, and certifies that he or she does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e)1. Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs; and

2. Except as provided in Section 7 of this administrative regulation, the student for whom a parent is borrowing is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation; and

(g) For loans on which the first disbursement is made on or after July 1, 1993, does not have an adverse credit history;

(h) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause.

Section 6. Refund of a Grant or Scholarship Overpayment. A student shall owe a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he or she is eligible to receive or use. Notwithstanding Section 5(1)(d) and (2)(d) of this administrative regulation, an otherwise eligible student or an otherwise eligible parent borrower who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment shall be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs under the following conditions:

(1) Pell Grant overpayment.

(a) If an institution makes a Pell Grant overpayment to a student, that otherwise eligible student or an otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) if the institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(b) If an institution makes a Pell Grant overpayment to a eligible

student as a result of its own error, and cannot eliminate the overpayment under paragraph (a) of this subsection, the otherwise eligible student or otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the student acknowledges the overpayment and agrees, in writing, to repay it within six (6) months.

(2) SEOG or SSIG overpayment. If an institution makes an SEOG or SSIG overpayment to a student, that otherwise eligible student or otherwise eligible borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

Section 7. Default on a Loan. Notwithstanding Section 5(1)(e) and (2)(e) of this administrative regulation, an otherwise eligible borrower or student for whom a parent is borrowing who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible to benefit from assistance under an authority insured student loan program under the following conditions:

(1)(a) An otherwise eligible borrower or student for whom a parent is borrowing who is in default on a loan made under the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible pursuant to Section 5(1)(e) or (2)(e) of this administrative regulation if the secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the otherwise eligible borrower has made satisfactory arrangements to repay the defaulted loan.

(b) For purposes of paragraph (a) of this subsection, the otherwise eligible borrower shall be deemed to have made satisfactory arrangements to repay a defaulted authority insured student loan if the borrower or student for whom a parent is borrowing:

1. Repays an amount necessary to bring the repayment obligation contractually current, and promises to make monthly payments on the remaining outstanding balance necessary to repay that balance within three (3) to five (5) years; or

2. Agrees to make monthly payments, and does make at least six (6) consecutive voluntary payments, none of which are more than ten (10) days delinquent, in an amount that is the greater of fifty (50) dollars, the originally scheduled payment prior to default, or twenty-five (25) of the borrower's disposable pay, provided that the required payments shall not exceed an amount that is determined by the executive director of the authority to be reasonable and affordable based on the individual's total financial circumstances.

(2) Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs. An otherwise eligible student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs shall be eligible pursuant to Section 1(7) of this administrative regulation if the institution that made the loan or the secretary, if the loan has been assigned to the secretary, certifies that the student has made satisfactory arrangements to repay that loan.

(3) The participating institution may rely on the borrower's or student's written statement that he or she is not in default, unless the institution has information to the contrary.

(4) Neither a loan that is discharged in bankruptcy nor a defaulted loan that is paid in full after default shall be considered to be in default for purposes of this section.

Section 8. Statement of Educational Purpose. (1) In order to meet the requirement of Section 5(1)(f) and (2)(f) of this administrative regulation, an otherwise eligible borrower shall submit to the lender, each academic year for which a loan is sought, a written statement of educational purpose, on a form approved by the secretary, which need not be notarized, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending. In this statement the borrower shall include his or her Social Security number or if he or she does not have a Social Security number, his or her student identification number.

(2) Notwithstanding subsection (1) of this section, a student is only required to file the statement of educational purpose once for his or her course of study if:

(a) The course of study is one (1) academic year or less in length; and

(b) The student is expected to complete the course of study within a twelve (12) month period.

Section 9. Additional Eligibility Requirements for Receipt of a Subsidized Federal Stafford Loan. In addition to the requirements provided in Sections 1 and 5(1) of this administrative regulation, a student seeking a subsidized federal Stafford Loan shall:

(1) Have provided to the lender a statement from the participating institution, at which the student has been accepted for enrollment, or at which the student is in attendance, that:

(a) Sets forth the student's estimated cost of attendance;

(b) Sets forth, for the period for which the loan is sought, the amount of estimated financial assistance the student will receive:

(c) Sets forth a schedule for disbursement of the proceeds of the loan in installments;

(d) Evidences a determination of need for a loan and the amount of such need, as determined under part F of Title IV of the federal Act (20 USC 1087kk,et seq.);

(2) Provide to the lender at the time of application for a loan the student's driver's license number, if any;

(3) A participating institution shall not, in carrying out the provisions of subsection (2) of this section, provide a statement which certifies the eligibility of any student to receive any loan under this section in excess of the maximum amount applicable to such loan;

(4) Except as provided in subsection (3) of this section, a participating institution may refuse to certify a statement which permits a student to receive a loan or to certify a loan amount that is less than the student's determination of need, as determined under part F of Title IV of the federal Act (20 USC 1087kk, et seq.), if the reason for such action is documented and provided in written form to each student so affected.

Section 10. Additional Eligibility Requirements for Receipt of a Federal SLS Loan. In addition to the requirements set forth in Sections 1 and 5(1) of this administrative regulation a student seeking a federal SLS loan for any period of enrollment, shall:

(1) Have received a determination of need for a subsidized federal Stafford Loan, and, if determined to have need for such a loan, have applied for such a loan;

(2) Be:

(a) A graduate or professional student;

(b) An undergraduate independent student; or

(c) An undergraduate dependent student, if the financial aid administrator determines and documents the determination in the institution's records, after review of the financial information submitted by the student and considering the debt burden of the student, that exceptional circumstances will likely preclude the student's parents from borrowing a federal PLUS loan for purposes of the expected family contribution and that the student's family is otherwise unable to provide such expected family contribution; and

(3) Notwithstanding paragraph (3)(b) of Section 1 of this administrative regulation, has a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.

Section 11. Eligibility Requirements for Receipt of a Federal Consolidation Loan. (1) For the purpose of this section, an individual shall be eligible to borrow a federal Consolidation Loan, if, at the time of application for a consolidation loan, the individual:

(a) Has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and

(b) Is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower, who has made satisfactory repayment arrangements pursuant to Section 7 of this administrative regulation, and who will reenter repayment through loan consolidation.

(2) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except:

(a) With respect to eligible student loans received after the date of receipt of the consolidation loan; and

(b) That loans received prior to the date of the consolidation loan may be added to the consolidation loan during the 180-day period following the making of the consolidation loan.

(3) A married couple, each of whom has eligible student loans, may be treated as if the couple were an individual borrowing under subsections (1) and (2) of this section if the couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to any subsequent change that may occur in the couple's marital status. Only one (1) spouse in a married couple applying for a consolidation loan need meet any of the requirements of subsection (1) of this section, except that each spouse shall:

(a) Individually make the initial certification that no other application is pending for a federal Consolidation Loan, or that the individual has sought and has been unable to obtain a federal Consolidation Loan from the holders of that individual's eligible loans selected for consolidation; and

(b) Agree to promptly notify the holder of the federal Consolidation Loan concerning any change of address.

(4) Eligible student loans. For the purpose of this section, student loans are eligible for discharge through a federal Consolidation Loan if the loans are:

(a) Made, insured, or guaranteed under part B of Title IV of the federal Act, except for loans made to parent borrowers under the federal PLUS loan program as in effect prior to October 17, 1986;

(b) Made under part E of Title IV of the federal Act; or

(c) Made under subpart 11 of part C of title VII of the Public Health Service Act.

Section 12. Conditions of Ineligibility. (1) Notwithstanding any other provision of this regulation, no incarcerated student or parent is eligible to receive an authority insured student loan under this title.

(2) Loss of eligibility for violation of loan limits.

(a) No student shall be eligible to receive any loan under this administrative regulation if the participating institution determines that the student fraudulently borrowed in violation of the annual loan limits applicable to any loan made or insured under Title IV part B, part D or part E of the federal Act in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits applicable to any loan made or insured under part B, part D or part E of the federal Act.

(b) If the participating institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, the institution shall allow the student to repay any amount borrowed in excess of the limits prior to certifying the student's eligibility for further authority insured student loans.

(3) An individual who previously had a federal Stafford loan, federal SLS loan, federal PLUS loan, or a federal Consolidation loan cancelled, due to disability, or discharged, by bankruptcy or compromise, shall not be eligible for an authority insured student loan until the borrower:

(a) Reaffirms the loan debt that was previously cancelled due to the borrower's total and permanent disability, or was discharged by bankruptcy or compromise; and

(b)1. In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

2. Signs a statement acknowledging that any new loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(4) A student shall not be eligible to borrow or benefit from an authority insured student loan for enrollment in a correspondence course of instruction, unless the course is part of a program leading to an associate, bachelor, or graduate degree.

(5) The financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, other than a course that is delivered using video cassette or disc recordings that is not delivered in person to other students of the participating institution.

(6) An individual shall not be eligible to borrow or benefit from an authority insured student loan to the extent the individual is determined by a court, pursuant to PL 100-690, to be ineligible to receive any federal benefits following conviction for any federal or state offense related to distribution or possession of controlled substances.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director. Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Historically, for the immediately preceding 1991-92 academic year, 47,534 loans, totalling $114,122,320, to eligible borrowers were insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet higher education costs.

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

1. First year: In the current academic year (1992-93), it is estimated that the volume of loan insurance will increase to approximately 55,915 loans to eligible borrowers, totalling up to $134,196,000.

2. Continuing costs or savings: In the 1993-94 academic year, the volume of loan insurance is anticipated to substantially increase to approximately 72,916 loans to eligible borrowers, totalling up to $175,000,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation reflects recent changes in the federal Act that include a new student loan program for middle income students who do not qualify for interest subsidy payments by the federal government, and reinstatement of eligibility after default. This expanded eligibility is expected to dramatically increase the demand for insured student loans.

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements that are not mandatory under the federal Act and applicable federal regulations. The reporting and paperwork requirements on eligible borrowers include filing with the educational institution a statement of selective service registration, filing with lender a statement that the loan proceeds will be used exclusively for educational purposes, documenting immigration status where applicable, and providing the borrower's name address, social security number, and driver's license number. Such federal requirements that are reflected in this regulation are not new or different requirements, since they are already imposed through 11 KAR 3:060, which is being repealed by proposed 11 KAR 3:061 in favor of this and other separate proposed regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation provides generally for expanded borrower eligibility resulting from recent changes in the federal Act. Expanded eligibility will translate into an increase of loan insurance volume by the agency with corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payments of administrative cost allowance (1% of principal amount of loans insured) and receipt of insurance premiums, but will be minimized to the extent that the increased loan insurance volume represents unsubsidized federal Stafford Student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority. All costs of administering the loan insurance program are borne by the federally restricted loan guarantee claims reserve fund, without General Fund appropriations.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in loan insurance volume and the mix of loans that comprise the increase.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increases in loan insurance volume will necessarily result in a corresponding increase in the processing of loan applications, generation of notices, and ultimately an increase in the paperwork associated with the processing of insurance claims and the recovery of defaulted and bankrupt loans.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. There is no effect on state General Fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 3% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this regulation. the Kentucky Higher Education Assistance Authority is required pursuant to Title IV, Part B of the federal Act (20 USC §1071 et seq., federal regulations (34 CFR Parts 668 and 682), agreements with the U. S. Secretary of Education, and KRS 164.744(1) to assure that loans insured by the Assistance Authority are reinsured by the federal government and that all participants in the Assistance Authority's loan insurance program meet the requirements set forth in federal law and regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682.

(a) Necessity of proposed regulation if in conflict: PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation prescribes eligibility for participation in a voluntary program providing loan insurance benefits. Tiering was not applied, because the regulation sets uniform eligibility standards under federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: This regulation provides for insurance on loans for any academic year without restriction as to the state of residency of the borrower for any student or parent borrowing on behalf of a student who generally meets the requirements of enrollment in an eligible program of study, is making satisfactory academic progress, files statements of educational purpose and compliance with Selective Service Registration, is not in default in repayment of specified loans or grants, is a U.S. citizen or eligible noncitizen, and, where applicable, demonstrates financial need.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal Act.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The Assistance Authority is provided with some discretion in certain areas. First, the Assistance Authority has chosen to allow eligibility of half time students rather than restricting it to only full time students to afford maximum opportunity for loans. Second, the Assistance Authority does not impose a limit on the number of academic years of eligibility, although the federal Act would permit a limit of not less than seven academic years. In this way the Assistance Authority is maximizing loan availability, while the integrity of the loan program is protected by the aggregate dollar limitations on loans impose under another regulation. Third, the Assistance Authority has established payment standards for reinstatement of

eligibility after default. these include six consecutive monthly payments of the greater of the original scheduled pre-default payment, $50, or 25% of disposable pay on the rationale that $50 per month is the minimum predefault payment on a loan, and 25% of disposable pay is the amount that could be recovered through forced payment under a judicial garnishment.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:025. Eligible program.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 20 USC §1088(e)

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. In order for an otherwise eligible student to benefit from an authority insured student loan, the student must be enrolled or accepted for enrollment at a participating institution in an eligible program of study. This administrative regulation is necessary to prescribe the eligibility of programs of study.

Section 1. General. For loans disbursed prior to July 1, 1993, an otherwise eligible student may borrow an authority insured student loan or benefit from an authority insured student loan to the parent of the student, if the student is enrolled or accepted for enrollment at a participating institution in a program of study that:

(1) Admits as regular students only persons who:

(a) Have a high school diploma;

(b) Have the recognized equivalent of a high school diploma;

(c) Are beyond the age of compulsory school attendance in the state in which the institution is located, and for the Robert T. Stafford Federal Student Loan and the federal PLUS Loan programs, have the ability to benefit from the education or training offered; or

(d) Are not enrolled in elementary or secondary school;

(2)(a) Leads to a bachelor's, associate, graduate, or professional degree;

(b) Is at least a two (2) year program that is acceptable for full credit toward a bachelor's degree;

(c) Is at least a one (1) year training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(d) Is, for a proprietary institution of higher education or a postsecondary vocational institution, at least a six (6) month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(e) Is, for a proprietary institution of higher education or a postsecondary vocational institution, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that:

1. Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

2. In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

3. In the case of an institution using credit hours or units to measure academic progress, is no less than eight (8) semester or trimester hours or units or twelve (12) quarter hours or units; and

4. In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

5. Is at least a one (1) year training program for graduates of accredited health professionals programs that is provided by a hospital or health-care facility, and leads to a degree or certificate.

Section 2. For loans disbursed on or after July 1, 1993:

(1) An eligible program shall consist of at least:

(a) 600 clock hours of instruction, sixteen (16) semester hours, or twenty-four (24) quarter hours, offered during a minimum of fifteen (15) weeks, in the case of a program that:

1. Provides a program of training to prepare students for gainful employment in a recognized profession; and

2. Admits students who have not completed the equivalent of an associate degree; or

(b) 300 clock hours of instruction, eight (8) semester hours, or twelve (12) hours, offered during a minimum of ten (10) weeks, in the case of:

1. An undergraduate program that requires the equivalent of an associate degree for admissions; or

2. A graduate or professional program.

(2) Notwithstanding subsection (1) of this section, programs of less than 600 clock hours, but greater than 300 clock hours, in length shall be eligible if approved by the secretary, provided that the program shall at a minimum have a verified rate of completion of at least seventy (70) percent and a verified rate of placement of at least seventy (70) percent.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Historically, for the immediately preceding 1991-92 academic year, 47,534 loans, totalling $114,122,320, to eligible borrowers were insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet higher education costs at over 6600 eligible educational institutions nationwide.

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

1. First year: In the current academic year (1992-93), it is estimated that the volume of loan insurance will increase to approximately 55,915 loans to eligible borrowers, totalling up to $134,196,000.

2. Continuing costs or savings: In the 1993-94 academic year, the volume of loan insurance is anticipated to substantially increase to approximately 72,916 loans to eligible borrowers, totalling up to $175,000,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation reflects recent changes in the federal Act that include a new student loan program for middle income students who do not qualify for interest subsidy payments by the federal government. This expanded eligibility is expected to dramatically increase the demand for insured student loans.

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements that are not mandatory under the federal Act and applicable federal regulations. The reporting and paperwork requirements would generally fall on participating institutions, and would include documenting the length of the educational program and the amount of any correspondence component. It is the intent of the Assistance Authority to rely upon the certification process of the U.S. Department of Education to determine the eligibility of programs of study, without duplicating paperwork. However, the Assistance Authority reserves the right to obtain such documentation as is necessary to verify the eligibility of the program if, for instance, it has reason to believe that circumstances of the program have changed subsequent to federal certification or that the program is not being administered in accordance with the certification.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Increase in loan insurance volume is expected to result in a corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payments of administrative cost allowance (1% of principal amount of loans insured) and receipt of insurance premiums, but will be minimized to the extent that the increased loan insurance volume represents unsubsidized federal Stafford Student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority). All costs of administering the loan insurance program are borne by the federally restricted loan guarantee claims reserve fund, without General Fund appropriations.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in loan insurance volume and the mix of loans that comprise the increase.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increases in loan insurance volume will necessarily result in a corresponding increase in the processing of loan applications, generation of notices, and ultimately an increase in the paperwork associated with the processing of insurance claims and the recovery of defaulted and bankrupt loans.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. there is no effect on state General Fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 3% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this regulation. the Kentucky Higher Education Assistance Authority is required pursuant to Title IV, Part B of the federal Act (20 USC §1071 et seq., federal regulations (34 CFR Parts 668 and 682), agreements with the U. S. Secretary of Education, and KRS 164.744(1) to assure that loans insured by the Assistance Authority are reinsured by the federal government and that all participants in the Assistance Authority's loan insurance program meet the requirements set forth in federal law and regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682. Other state agencies (licensing boards) may have primary jurisdiction over determining the minimum or maximum length of an educational program for purposes of granting a license. However, this regulation does not conflict or overlap with any such statute or regulation, because it is mandated under the federal Act and is pertinent only in determining whether a student enrolled in that program will qualify for an insured student loan.

(a) Necessity of proposed regulation if in conflict: PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments:

TIERING: Was tieing applied? No. If no, explain why tieing was not applied. This regulation prescribes eligibility for participation in a voluntary program providing loan insurance benefits. Tieing was not applied, because the regulation sets uniform eligibility standards under federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: This regulation reiterates the requirements of 34 CFR §668.8 as superseded by amendments to §488 of the federal Act by PL 102-325, that become effective for loans disbursed on or after July 1, 1993, for insurance on loans for any student enrolled in an eligible program of study consisting of at least 300 clock hours.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lenders, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal Act.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:035 Maximum loan amounts.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 20 USC §1078(b)(1)(A), (B), §1087kk

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. This administrative regulation is necessary to prescribe the eligibility of borrowers and students who would benefit from authority insured student loans.

Section 1. Robert T. Stafford Federal Student Loan Program Annual Limits. The total combined amount that an eligible student may borrow in any academic year of study under the subsidized and unsubsidized Robert T. Stafford Loan programs shall not exceed:

(1) In the case of a student at a participating institution who has not successfully completed the first year of a program of undergraduate:

(a) $2,625 for loans on which the application was certified by the participating institution prior to October 1, 1992;

(b) For loans on which the application was certified by the participating institution on or after October 1, 1992, $2,625, if the student is enrolled in a program whose length is at least one (1) academic year in length;

(c) For loans on which the application was certified by the participating institution on or after October 1, 1992, $1,750, if the student is enrolled in a program whose length is less than one (1) academic year, but at least two-thirds (2/3) of an academic year; and

(d) For loans on which the application was certified by the participating institution on or after October 1, 1992, $875, if the student is enrolled in a program whose length is less than two-thirds (2/3), but at least one-third (1/3), of an academic year;

(2) In the case of a student who has successfully completed the first year but has not successfully completed the remainder of a program of undergraduate:

(a) $2,625 for a student who has not completed the second year of a program of undergraduate study, except as provided in paragraphs (b) through (d) of this subsection;

(b) $3,500 for loans for which the first disbursement is made on or after July 1, 1993, if the length of the remainder of the program in which the student is enrolled is at least one (1) academic year;

(c) $2,325 for loans for which the first disbursement is made on or after July 1, 1993, if the student is enrolled less than one (1) academic year, but at least two-thirds (2/3) of an academic year; and

(d) $1,175, for loans for which the first disbursement is made on or after July 1, 1993, if the length of the remainder of the program in which the student is enrolled in a program whose length is less than two-thirds (2/3), but at least one-third (1/3), of an academic year;

(3) In the case of a student at a participating institution who has successfully completed the first and second year, but has not successfully completed the remainder of a program of undergraduate study:

(a) $4,000, except as provided in paragraphs (b) through (d) of this subsection;

(b) $5,500, for loans for which the first disbursement is made on or after July 1, 1993, if the length of the remainder of the program in which the student is enrolled is at least one (1) academic year;

(c) $3,675, for loans for which the first disbursement is made on or after July 1, 1993, if the length of the remainder of the program in which the student is enrolled in a program whose length is less than one (1) academic year, but at least two-thirds (2/3) of an academic year; and

(d) $1,825, for loans for which the first disbursement is made on or after July 1, 1993, if the length of the remainder of the program in which the student is enrolled is less than two-thirds (2/3), but at least one-third (1/3), of an academic year; and

(4) In the case of a graduate or professional student at a participating institution, $7,500 for loans made to cover the cost of attendance for periods of enrollment beginning prior to October 1, 1993, and $8,500 for loans made to cover the cost of attendance for periods of enrollment beginning on or after that date;

(5) Notwithstanding any other provision of this section, a subsidized federal Stafford loan shall not exceed the borrower's cost of attendance, nor shall it exceed the borrower's financial need certified by the participating institution in compliance with Part F of the federal Act;

(6) Notwithstanding any other provision of this section, an unsubsidized federal Stafford loan shall not exceed the borrower's estimated cost of attendance minus estimated financial assistance.

Section 2. Robert T. Stafford Federal Student Loan Program Aggregate Limits. The aggregate guaranteed unpaid principal amount of all subsidized and unsubsidized federal Stafford loans made to a student shall not exceed:

(1) In the case of any student who has not successfully completed a program of undergraduate education, excluding loans made under the federal SLS loan and the federal PLUS loan programs:

(a) $17,250 for loans disbursed prior to July 1, 1993; or

(b) $23,000 for loans for which the first disbursement is made on or after July 1, 1993; and

(2) In the case of any graduate or professional student, including any federal Stafford loans which are insured by the secretary or by a guaranty agency, made to the student before the student became a graduate or professional student, but excluding loans made under the federal SLS loan and the federal PLUS loan programs:

(a) $54,750 for loans disbursed prior to July 1, 1993; or

(b) $65,500 for loans on which the first disbursement is made on or after July 1, 1993;

(3) The secretary may increase the limit applicable to students who are pursuing programs which the secretary determines are exceptionally expensive.

Section 3. Federal Supplemental Loans For Students (SLS) Limitations on Amounts of Loans. (1) Annual limit. Subject to subsections (2) and (3) of this section:

(a) The maximum amount a student may borrow in any academic year or its equivalent for loans disbursed prior to July 1, 1993, shall be $4,000; and

(b) The maximum amount a student may borrow in any academic year or its equivalent or in any period of seven (7) consecutive months, whichever is longer, for loans on which the first disbursement is made on or after July 1, 1993, in the case of a student at a participating institution who has not successfully completed the first and second year of a program of undergraduate education, shall be:

1. $4,000, if such student is enrolled in a program whose length is at least one (1) academic year in length;

2. $2,500, if such student is enrolled in a program whose length is less than one (1) academic year, but at least two-thirds (2/3) of such an academic year; and

3. $1,500, if such student is enrolled in a program whose length is less than two-thirds (2/3), but at least one-third (1/3), of such an academic year.

(c) The maximum amount a student may borrow in any academic year or its equivalent or in any period of seven (7) consecutive months, whichever is longer, for loans on which the first disbursement is made on or after July 1, 1993, in the case of a student at a participating institution who has successfully completed such first and second year but has not successfully completed the remainder of a

program of undergraduate study, shall be:

1. $5,000, if such student is enrolled in a program whose length is at least one (1) academic year in length;

2. $3,325, if such student is enrolled in a program whose length is less than one (1) academic year, but at least two-thirds (2/3) of such an academic year; and

3. $1,675, if such student is enrolled in a program whose length is less than two-thirds (2/3), but at least one-third (1/3), of such an academic year.

(d) The maximum amount a graduate or professional student may borrow in any academic year or its equivalent or in any seven (7) consecutive months, whichever is longer, for loans on which the first disbursement is made on or after July 1, 1993, shall be $10,000.

(2) Aggregate limit. The aggregate insured principal amount of insured loans made to any student, minus any interest capitalized, shall not exceed:

(a) $20,000 for loans disbursed prior to July 1, 1993; or

(b) For loans on which the first disbursement is on or after July 1, 1993:

1. $23,000, in the case of any student who has not successfully completed a program of undergraduate education; and

2. $73,000, in the case of any graduate or professional student, as such terms are defined by regulations issued by the secretary, including any loans which are insured by the secretary under this section, or by a guaranty agency, made to such student before the student became a graduate or professional student.

(3) Limitation based on need. No loan may be made to any student under this section for any academic year in excess of:

(a) The student's estimated cost of attendance, minus

(b) The total of:

1. Any subsidized federal Stafford loan for which the student is eligible; and

2. Other financial aid as certified by the participating institution.

(4) The annual insurable limit on account of the student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

Section 4. Federal PLUS Loan Program. (1) Annual limits for loans disbursed prior to July 1, 1993. The total principal amount of all federal PLUS program loans made to, or for the benefit of, an eligible student for any academic year of study shall not exceed $4,000.

(2) Federal PLUS Loan program aggregate limits for loans disbursed prior to July 1, 1993. The aggregate guaranteed unpaid principal amount of all federal PLUS program loans made to or for the benefit of an eligible student shall not exceed $20,000.

(3) For loans on which the first disbursement is made on or after July 1, 1993, the only annual or aggregate limit on loans under this section shall be the need prescribed in subsection (4) of this section.

(4) Limitation based on need. No loan may be made to any parent under this section for any academic year in excess of:

(a) The student's estimated cost of attendance, minus

(b) Other financial aid as certified by the participating institution.

(5) The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

Section 5. Federal Consolidation Loans. (1) Loans made under this section shall, to the extent used to discharge eligible loans shall be counted against the applicable limitations on aggregate indebtedness contained in Sections 1 and 2 of this administrative regulation, and section 464(a)(2) of the federal Act.

(2) Each federal Consolidation Loan will be made, notwithstanding any other provision of this administrative regulation limiting the annual or aggregate principal amount for all authority insured student loans made to a borrower, in an amount:

(a) Which is not less than the minimum amount required for eligibility of the borrower under 11 KAR 3:015; and

(b) Which is equal to the sum of the unpaid principal and accrued unpaid interest and late charges of all eligible loans received by the eligible borrower which are selected by the borrower for consolidation.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden. Executive Director. Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Historically, for the immediately preceding 1991-92 academic year, 47,534 loans, totalling $114,122,320, to eligible borrowers were insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet higher education costs.

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

1. First year: In the current academic year (1992-93), it is estimated that the volume of loan insurance will increase to approximately 55,915 loans to eligible borrowers, totalling up to $134,196,000.

2. Continuing costs or savings: In the 1993-94 academic year, the volume of loan insurance is anticipated to substantially increase to approximately 72,916 loans to eligible borrowers, totalling up to $175,000,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation reflects recent changes in the federal Act that include a new student loan program for middle income students who do not qualify for interest subsidy payments by the federal government, increased loan maximums for subsidized federal Stafford loans and federal SLS loans, the proration of loan limits for enrollment periods of less than an academic year, and the elimination of loan limits on federal PLUS loans other than the cost of education. This expanded eligibility is expected to dramatically increase the demand for insured student loans.

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation provides generally for increased loan maximums resulting from recent changes in the federal Act. Expanded eligibility will translate into an increase of loan insurance volume by the agency with corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payments of administrative cost allowance (1% of principal amount of loans insured) and receipt of insurance premiums, but will be minimized to the extent that the increased loan insurance volume

represents unsubsidized federal Stafford Student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority. All costs of administering the loan insurance program are borne by the federally restricted loan guarantee claims reserve fund, without General Fund appropriations.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in loan insurance volume and the mix of loans that comprise the increase.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increases in loan insurance volume will necessarily result in a corresponding increase in the processing of loan applications, generation of notices, and ultimately an increase in the paperwork associated with the processing of insurance claims and the recovery of defaulted and bankrupt loans.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. there is no effect on state General Fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 3% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this regulation. the Kentucky Higher Education Assistance Authority is required pursuant to Title IV, Part B of the federal Act (20 USC §1071, et seq., federal regulations (34 CFR Parts 668 and 682), agreements with the U. S. Secretary of Education, and KRS 164.744(1) to assure that loans insured by the Assistance Authority are reinsured by the federal government and that all participants in the Assistance Authority's loan insurance program meet the requirements set forth in federal law and regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682.

(a) Necessity of proposed regulation if in conflict: PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation prescribes prorated loan maximums for periods of enrollment of less than a full academic year.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: This regulation provides for insurance on loans up to a limit of specified annual maximums and cumulative (aggregate) maximums for federal Stafford student loans and federal SLS loans. Within those annual limits, the maximums are prorated for periods of less than a full academic year. Federal PLUS loans are limited only by the cost of education and federal Consolidation loans are limited by the amount of eligible prior loans selected to be discharged by the consolidation.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal Act. The maximum loans that are reinsurable, and therefore insurable by the Assistance Authority are specified in §1078(b)(1)(A) and (B), §1078-1, §1078-2, and §1078-3.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The Assistance Authority is provided with some discretion to establish lower loan maximums. However, the Assistance Authority has chosen to allow insurance of the federal maximum amount to afford maximum opportunity for loans.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:045. Permissible charges by lenders to borrowers.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 34 CFR §682.202, 20 USC §1077a, §1078(B)(1)

STATUTORY AUTHORITY: KRS 13A.100(3), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. This administrative regulation is necessary to prescribe the charges that lenders may impose on borrowers, either directly or indirectly.

Section 1. Interest Rates on Subsidized Federal Stafford Loans. (1) The annual interest rate on the unpaid principal balance (including any capitalized interest added to principal) of a subsidized federal Stafford Loan for a borrower who, on the date of signing the promissory note or other written evidence of that loan, does not owe an outstanding balance on a previous federal Stafford loan shall be:

(a) Seven (7) percent for a loan covering a period of instruction beginning before January 1, 1981;

(b) Nine (9) percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(c) Eight (8) percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(d) For any loan to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1988:

1. Eight (8) percent during the period beginning on the date of the disbursement of the loan and ending four (4) years after the commencement of repayment; and

2. Ten (10) percent during the remainder of the repayment period;

(e) For any loan for which the first disbursement is made on or

after October 1, 1992, during any twelve (12) month period beginning on July 1 and ending on June 30, be determined by the secretary on the preceding June 1 and be equal to the bond equivalent rate of ninety-one (91) day treasury bills, auctioned at the final auction held prior to such June 1, plus three and one-tenth (3.1) percent, except that the rate shall not exceed nine (9) percent. The secretary shall determine the rate of interest under this paragraph after consultation with the U.S. Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination;

(f) Eight (8) percent for any loan made, on or after October 1, 1992, to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any federal SLS loan, federal PLUS loan, or federal Consolidation loan.

(2) The interest rate on a subsidized federal Stafford loan for a borrower who, on the date of signing the promissory note or other written evidence of that loan, has an outstanding balance on a previous federal Stafford loan, shall be the applicable interest rate on the previous loan.

(3) Treatment of excess interest payments on accounts resulting from decline in treasury bill rates;

(a) If, with respect to a loan for which the applicable interest rate is ten (10) percent under subsection (1)(d) of this section at the close of any calendar quarter, the sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for that quarter and 3.25 percent is less than ten (10) percent, then an adjustment shall be made to a borrower's account by calculating excess interest in the amount computed under paragraph (b) of this subsection, and crediting the excess interest to the reduction of principal to the extent provided for under paragraph (c) of this subsection;

(b) The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to ten (10) percent minus:

1. The sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for the calendar quarter, plus 3.25 percent; multiplied by

2. The outstanding principal balance of the loan (not including unearned interest added to principal) at the end of the calendar quarter; divided by

3. Four (4).

(c) Annual adjustment of interest and borrower eligibility for credit. Any adjustment amount computed pursuant to paragraph (b) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than thirty (30) days in making a required payment on the loan. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no later than thirty (30) days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on the loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan.

(4)(a) If, with respect to a loan (other than a loan for which the interest rate is determined in accordance with subsection (1)(e) of this section) made on or after July 23, 1992 to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any other authority insured loan, the sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for that quarter plus three and one-tenth (3.1) percent is less than the applicable interest rate, then an adjustment shall be made by calculating excess interest in the amount computed under paragraph (b) of this subsection; and

1. During any period in which a student is eligible to have interest subsidy payments paid on his or her behalf by the secretary, by crediting the excess interest to the amount due from the secretary; or

2. During any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (c) of this subsection.

(b) Amount of adjustment. The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to the applicable interest rate minus the sum of:

1. The average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such calendar quarter, plus three and one-tenth (3.1) percent; multiplied by

2. The outstanding principal balance of the loan (not including unearned interest added to principal) at the end of such calendar quarter; divided by

3. Four (4).

(c) Annual adjustment of interest and borrower eligibility for credit. Any adjustment amount computed pursuant to paragraph (b) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than thirty (30) days in making a required payment on the loan. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no later than thirty (30) days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on the loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan.

(5)(a) The participating lender shall not collect from a borrower any amount of interest that is payable to the lender by the secretary on behalf of the borrower as a subsidy under the federal Act.

(b) The participating lender shall not charge interest or receive interest subsidies for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed.

Section 2. (1) Interest Rates on Unsubsidized Federal Stafford Loans. The annual interest rate on the unpaid principal balance (including any capitalized interest added to principal) of an unsubsidized federal Stafford loan for a borrower shall be the variable rate determined under Section 1(1)(e) of this administrative regulation.

(2) Interest that accrues on loans under this section during periods in which payments of principal are deferred shall, if agreed upon by the borrower and the lender:

(a) Be paid monthly or quarterly; or

(b) Be added to the principal amount of the loan not more frequently than quarterly by the lender.

Section 3. Interest Rates for Federal Supplemental Loans for Students and Federal PLUS Loans. (1) In general. Except as provided in subsections (2), (3), (5) and (6) of this section, the applicable rate of interest on federal Supplemental Loans for Students and federal PLUS loans made on or after October 1, 1981, shall be fourteen (14) percent per year on the unpaid principal balance (including capitalized interest) of the loan.

(2) The applicable interest rate on a federal SLS loan made to cover a period of enrollment beginning on or after October 17, 1986

or a federal PLUS loan, if the federal SLS loan or federal PLUS is disbursed prior to July 1, 1987, shall be:

(a) Nine (9) percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(b) Fourteen (14) percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(c) Twelve (12) percent for a loan made on or after November 1, 1982.

(3) Reduction of rate after decline in treasury bill rates. If for any twelve (12) month period beginning on or after October 1, 1981, the secretary, after consultation with the U.S. Secretary of the Treasury, determines that the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such twelve (12) month period is equal to or less than fourteen (14) percent, the applicable rate of interest for loans made on and after the first day of the first month beginning after the date of publication of the determination shall be twelve (12) percent per year on the unpaid principal balance of the loan.

(4) Increase of rate after increase in treasury bill rates. If for any twelve (12) month period beginning on or after the date of publication of a determination under subsection (2) of this section, the secretary, after consultation with the U.S. Secretary of the Treasury, determines that the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such twelve (12) month period exceeds fourteen (14) percent, the applicable rate of interest for loans made on and after the first day of the first month beginning after the date of publication of that determination under this subsection shall be fourteen (14) percent per year on the unpaid principal balance of the loan.

(5) Availability of variable rates.

(a) Except as provided in paragraphs (c) or (d) of this subsection, for any loan disbursed on or after July 1, 1987, or any new loan made to refinance previous federal SLS loans or federal PLUS loans made prior to that date, the applicable rate of interest during any twelve (12) month period beginning on July 1 and ending on June 30 shall be determined under paragraph (b) of this section, except that the rate shall not exceed twelve (12) percent.

(b) For any twelve (12) month period beginning on July 1 and ending on June 30, the rate determined under this paragraph shall be determined by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus 3.25 percent.

(c) Notwithstanding paragraph (a) of this subsection, for any federal SLS loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate shall be determined for any twelve (12) month period beginning on July 1 and ending on June 30 by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus three and on-tenth (3.1) percent, and the interest rate shall not exceed eleven (11) percent.

(d) Notwithstanding paragraph (a) of this subsection, for any federal PLUS loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate shall be determined for any twelve (12) month period beginning on July 1 and ending on June 30 by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus three and one-tenth (3.1) percent, and the interest rate shall not exceed ten (10) percent.

(6) A holder may at any time combine multiple loans that it holds for a borrower under a single repayment schedule, which provides for a single principal payment and a single payment of interest, and interest shall accrue on the combined balance at the weighted average of the rates of all included loans.

(7) Interest that accrues on loans under this section during periods in which payments of principal are deferred shall, if agreed upon by the borrower and the lender:

(a) Be paid monthly or quarterly; or

(b) Be added to the principal amount of the loan not more frequently than quarterly by the lender.

Section 4. Interest on Federal Consolidation Loan. Federal Consolidation loans shall bear interest at an annual rate on the unpaid principal balance of the loan (including any capitalized interest) that is equal to the greater of the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent, or nine (9) percent.

Section 5. Capitalization. (1) A participating lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance in accordance with subsections (2) and (3) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest that has accrued:

(a) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note, or by written consent of the borrower;

(b) During a period of authorized deferment;

(c) During a period of forbearance, in which interest is forborne; or

(d) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under subsection (2)(a) through (c) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under subsection (2)(d) of this section only on the date repayment of principal actually begins.

(4) Capitalization on claim. Interest accrued and unpaid at the time of payment of an insurance claim by the authority due to the default or bankruptcy of the borrower shall be capitalized at the time of payment of the claim.

Section 6. Origination and Loan Processing Fees. (1) Origination fee for a subsidized federal Stafford loan.

(a) Except as provided in paragraph (d) of this subsection, under the subsidized Robert T. Stafford Federal Student Loan program, a participating lender shall charge a borrower an origination fee of five (5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payment to the borrower.

(b) The origination fee authorized in paragraph (a) of this subsection shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 1 of this administrative regulation.

(c) The lender shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof by a credit against the borrower's loan balance if:

1. The loan check is returned uncashed to the lender;

2. The loan is repaid in full within 120 days of disbursement;

3. The loan check has not been cashed within 120 days of disbursement; or

4. The loan proceeds disbursed by electronic funds transfer have not been released from the restricted account maintained by the participating institution within 120 days of disbursement.

(d) The origination fee authorized by paragraph (a) of this

subsection shall be increased to five and five-tenths (5.5) percent for any loan made or disbursed during a period of sequestration pursuant to PL 99-177 (the "Balanced Budget and Deficit Control Act of 1985").

(2) Origination fee for an unsubsidized federal Stafford Loan.

(a) The participating lender shall charge the borrower and pay to the secretary a combined origination fee and insurance premium in the amount of six and five-tenths (6.5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payment to the borrower.

(b) The combined fee and premium shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 2 of this administrative regulation.

(3) Origination fee for a federal SLS loan or a federal PLUS loan.

(a) On each federal SLS loan or federal PLUS loan made on or after October 1, 1992, the participating lender shall charge the borrower and pay to the secretary an origination fee of five (5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payments to the borrower.

(b) The origination fee authorized in paragraph (a) of this subsection shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 3 of this administrative regulation.

(4) Administrative charge for refinancing a federal SLS loan or a federal PLUS loan.

(a) A participating lender that makes a new loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 and held by that lender, may charge a borrower an amount not to exceed $100 to cover the administrative costs of making the loan or, not more than one-half (1/2) of which shall be paid to the authority to cover the cost of reissuance.

(b) No administrative fee authorized in paragraph (a) of this subsection may be charged to a borrower by a participating lender that makes a loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by a holder other than that lender.

(5) Federal Consolidation Loan program. No administrative fee, charged by the authority to a participating lender to cover the costs of increased or extended liability with respect to insurance of a consolidation loan, may be charged to the borrower or otherwise deducted from the loan proceeds.

Section 7. Insurance Premium. The insurance premium is a charge made by the authority to the lender, incident to the guarantee the lender receives against default by the borrower.

(1)(a) If the insurance premium is provided for in a borrower's promissory note or other written evidence of a subsidized federal Stafford loan, a federal SLS loan, or a federal PLUS loan, including a new federal SLS loan or federal PLUS loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by a holder other than that lender, a participating lender may charge the borrower a single insurance premium actually paid by the lender to the authority equal to not more than three (3) percent of the principal amount of the loan, by deduction proportionately from each installment disbursement of the proceeds of the loan.

(b) Notwithstanding paragraph (a) of this subsection, no additional insurance fee may be charged to the borrower with respect to a new loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by the lender of the new loan.

(2) Insurance premium for an unsubsidized federal Stafford loan. A participating lender may charge to a borrower the combined origination fee and insurance premium authorized by Section 6(2) of this administrative regulation.

(3) Federal Consolidation loan. No insurance premium shall be charged to the borrower on any federal Consolidation loan.

Section 8. Late Charges. (1) If authorized by the borrower's promissory note or other written evidence of the debt, the holder may require the borrower of any authority insured student loan to pay a late charge under the circumstances described in subsection (2) of this section. This charge shall not exceed six (6) cents for each dollar of each late installment payment.

(2) The holder may require the borrower to pay a late charge if the borrower:

(a) Fails to pay all or a portion of a required installment payment within ten (10) days after it is due; and

(b) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

Section 9. Collection Charges. (1) If provided for in the borrower's promissory note or other written evidence of the debt, the holder may require that the borrower pay costs incurred by the holder or its agent in collecting installments not paid when due, including, but not limited to, attorney's fees, court costs, telegrams, and long distance telephone calls.

(2) The costs referred to in subsection (1) of this section shall not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower, such as local telephone calls.

Section 10. Penalty for Prepayment. The borrower shall be entitled to accelerate without penalty repayment of the whole or any part of an authority insured student loan.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Historically, for the immediately preceding 1991-92 academic year, 47,534 loans, totalling $114,122,320, to eligible borrowers were insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet higher education costs.

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

1. First year: In the current academic year (1992-93), it is estimated that the volume of loan insurance will increase to approximately 55,915 loans to eligible borrowers, totalling up to $134,196,000. The borrower will be responsible for payment of certain costs authorized by the federal Act that may include interest, origination fees, insurance premiums, late charges on loan repayment, and collection costs. The amount of the charges and whether a particular charge is due on a loan depends upon the type of loan and when the loan was made or disbursed.

2. Continuing costs or savings: In the 1993-94 academic year, the volume of loan insurance is anticipated to substantially increase to approximately 72,916 loans to eligible borrowers, totalling up to $175,000,000. The borrower will be responsible for payment of certain costs authorized by the federal Act tat may include interest, origination fees,insurance premiums,late charges on loan repayment, and collection costs. The amount of the charges and whether a particular charge is due on a loan depends upon the type of loan and when the loan was made or disbursed.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation reflects recent changes in the federal Act that include a new student loan program for middle income students who do not qualify for interest subsidy payments by the federal government. This expanded eligibility is expected to dramatically increase the demand for insured student loans.

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements upon borrowers.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation provides generally for the assessment of certain costs or charges to a borrower to the extent authorized by the federal Act. A portion of those costs, particularly insurance premiums (other than the insurance premiums on unsubsidized federal Stafford student loans), will be paid to the Assistance Authority to cover the risk of insurance claims and to pay for the costs of administration of the loan insurance program. Other costs, such as interest and collection costs, will be received by the Assistance Authority in the course of collection of defaulted loans which it acquires by payment of insurance claims to participating lenders. Expanded loan eligibility will translate into an increase of loan insurance volume by the agency with corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payment of administrative cost allowance (1% of principal amount of loans insured) and receipt of insurance premiums, but will be minimized to the extent that the increased loan insurance volume represents unsubsidized federal Stafford Student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority). All costs of administering the loan insurance program are borne by the federally restricted loan guarantee claims reserve fund, without General Fund appropriations.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in loan insurance volume and the mix of loans that comprise the increase.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increases in loan insurance volume will necessarily result in a corresponding increase in the processing of loan applications, generation of notices, and ultimately an increase in the paperwork associated with the processing of insurance claims and the recovery of defaulted and bankrupt loans.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. there is no effect on state General Fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 3% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this regulation. the Kentucky Higher Education Assistance Authority is required pursuant to Title IV, Part B of the federal Act (20 USC §1071, et seq., federal regulations (34 CFR Parts 668 and 682), agreements with the U. S. Secretary of Education, and KRS 164.744(1) to assure that loans insured by the Assistance Authority are reinsured by the federal government and that all participants in the Assistance Authority's loan insurance program meet the requirements set forth in federal law and regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682.

(a) Necessity of proposed regulation if in conflict: PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation prescribes charges associated with various types of insured student loans that may be assessed against the borrower. Participation by borrowers in the insured student loan program is voluntary, and the charges that may be assessed are limited by federal law and regulation. Tiering was not applied, because the regulation sets uniform charges for the various types of loans under federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: This regulation provides generally for the assessment of certain costs or charges to a borrower to the extent authorized by the federal Act. The borrower will be responsible for payment of certain costs that may include interest, origination fees, insurance premiums, late charges on loan repayment, and collection costs. The amount of the charges and whether a particular charge is due on a loan depends upon the type of loan and when the loan was made or disbursed.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal Act.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The Assistance Authority is provided with some discretion in certain areas. First, the Assistance Authority has chosen to provide for the capability of the lender to charge the borrower for the insurance premium on subsidized federal Stafford student loans up to the federal maximum of 3%, but not in excess of the amount actually charged by the Assistance Authority to the participating lender pursuant to a contract of insurance. This allows the participating lender to recover its costs within federal limits and maintain widespread participation in the program to maximize the availability

of loans for students. Second, the Assistance Authority has chosen to permit capitalization of interest within limits and under circumstances permitted by federal law and regulations. In this way the Assistance Authority is providing a capability for lenders to make loans where the borrower, during certain periods, would be unable to make interest payments. Loan availability is therefore enhanced. Third, The Assistance Authority has chosen to allow assessment of collection costs to provide an incentive to the borrower to pay as agreed, and to assist in recovery of the added expense of collection activity associated with the recovery of defaulted loans.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:055. Obtaining and repaying a loan.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR 682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. This administrative regulation is necessary to prescribe the process for obtaining an authority insured student loan.

Section 1. (1) Federal Stafford Loan and Federal SLS Loan Application. Generally, to obtain a subsidized or unsubsidized federal Stafford loan or a federal SLS loan insured by the authority, a student shall complete an application. The form of the application may vary depending upon the method of applying (e.g., electronic application process, combined application and note, or separate application and note). The student shall complete his or her portion of the application by providing at least the following information:

(a) The student's name, address, and Social Security number;

(b) The student's citizenship status;

(c) The student's enrollment status;

(d) Information on the status of any outstanding student loan indebtedness, including, but not limited to, a certification that the student does not owe repayment of a student grant and is not in default on a student loan;

(e) A certification that the loan proceeds will be used exclusively to meet the cost of attendance at the participating institution listed on the application; and

(f) Additional information necessary to demonstrate that the student meets the eligibility requirements set forth in Sections 1 and 5(1) of 11 KAR 3:015.

(2) Federal PLUS Loan program application. Generally, to obtain a federal PLUS loan insured by the authority, an individual shall complete an application. If the loan is to be made to the student's parent(s), both the student and the parent(s) shall complete the application before submitting it to the participating institution. The form of the application may vary depending upon the method of applying (e.g., electronic application process, combined application and note, or separate application and note). The borrower and a student on whose behalf the loan is sought shall provide at least the following information:

(a) Name, address, and Social Security number of both the borrower and student on whose behalf the loan is sought;

(b) The citizenship status of both the borrower and student on whose behalf the loan is sought;

(c) The student's enrollment status;

(d) Information on the status of any outstanding student loan indebtedness of both the borrower and student on whose behalf the loan is sought, including, but not limited to, a certification that neither the borrower nor the student on whose behalf the loan is sought owes repayment of a student grant or is in default on a student loan;

(e) A certification that the loan proceeds will be used exclusively to meet the cost of attendance at the participating institution listed on the application; and

(f) Additional information necessary to demonstrate that both the borrower and the student on whose behalf the loan is sought meet the eligibility requirements set forth in Sections 1 and 5(2) of 11 KAR 3:015.

(3) Federal Consolidation Loan program application. Generally, to obtain a federal Consolidation loan insured by the authority, an applicant shall complete an application, and submit it first to a participating lender holding at least one (1) of the applicant's eligible loans selected for consolidation. If all of the participating lenders holding the applicant's loans selected for consolidation decline to make a federal Consolidation loan to the applicant, then the applicant may submit the application to any other participating lender. The applicant shall provide at least the following information:

(a) The applicant's name, address, and Social Security number;

(b) Information on the status of any outstanding student loan indebtedness, including, but not limited to, a certification that the applicant does not owe repayment of a student grant and is not in default on a student loan;

(c) Additional information necessary to demonstrate that the applicant meets the eligibility requirements set forth in Section 11 of 11 KAR 3:015.

(4) Applications are available through participating institutions and participating lenders. Applications are also available at the offices of the authority, located in Frankfort, Kentucky, during regular business hours (8 a.m. to 4:30 p.m. Monday through Friday).

(5) The applicant shall submit the completed application form for a federal Stafford loan, federal SLS loan, or a federal PLUS loan to the participating institution for certification, and, after the institution certifies the application, the application shall be submitted to a participating lender of the applicant's choice. If the participating institution transmits its data to the authority electronically, the applicant shall submit the completed application form directly to a participating lender of the applicant's choice.

(6) If the participating lender declines to make the loan, the participating lender shall notify the applicant and shall provide to the applicant any disclosure of adverse action that may be required by federal or state laws, including, but not limited to, the Equal Credit Opportunity Act (15 United States Code §1691, et seq.). If the participating lender decides to make the loan, the lender may obtain a loan guarantee from the authority not in excess of the applicable loan maximum set forth in 11 KAR 3:035 only if the applicant qualifies as an eligible borrower pursuant to 11 KAR 3:015.

(7) In addition to an application, an eligible borrower shall execute a promissory note approved by the secretary in order to obtain any authority insured student loan. The promissory note may be contained in the application, or may be a separate form. The terms and conditions of the promissory note may vary, based upon the type of loan sought. The promissory note and supplemental disclosure and loan guarantee notices shall constitute evidence of the loan, and shall state directly or by reference to applicable laws and regulations the borrower's rights and responsibilities. Generally, the borrower shall agree to:

(a) Comply with regulations promulgated by the secretary and the authority; and

(b) Repay the full amount of the loan principal, collection costs chargeable to the borrower, any interest not payable by the secretary, and any other charges authorized pursuant to 11 KAR 3:045; and

(c) Inform the holder of the loan of any change in the borrower's name or address, and, with respect to a federal Stafford loan, any change of enrollment status.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Historically, for the immediately preceding 1991-92 academic year, 47,534 loans, totalling $114,122,320, to eligible borrowers were insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet higher education costs.

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

1. First year: In the current academic year (1992-93), it is estimated that the volume of loan insurance will increase to approximately 55,915 loans to eligible borrowers, totalling up to $134,196,000.

2. Continuing costs or savings: In the 1993-94 academic year, the volume of loan insurance is anticipated to substantially increase to approximately 72,916 loans to eligible borrowers, totalling up to $175,000,000.

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

(b) Reporting and paperwork requirements: This regulation does not impose any reporting or paperwork requirements that are not mandatory under the federal Act and applicable federal regulations. The reporting and paperwork requirements on eligible borrowers include filing with the educational institution a statement of selective service registration, filing with lender a statement that the loan proceeds will be used exclusively for educational purposes, documenting immigration status where applicable, and providing the borrower's name address, social security number, and driver's license number. Such federal requirements that are reflected in this regulation are not new or different requirements, since they are already imposed through 11 KAR 3:060, which is being repealed by proposed 11 KAR 3:061 in favor of this and other separate proposed regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation provides generally for the loan application process, which may take several forms, including electronic transmission of data and completion of combined application-promissory note forms. Expanded eligibility will translate into an increase of loan insurance volume by the agency with corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payment of administrative cost allowance (1% of principal amount of loans insured) and receipt of insurance premiums, but will be minimized to the extent that the increased loan insurance volume represents unsubsidized federal Stafford Student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority. All costs of administering the loan insurance program are borne by the federally restricted loan guarantee claims reserve fund, without General Fund appropriations.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in loan insurance volume and the mix of loans that comprise the increase.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increases in loan insurance volume will necessarily result in a corresponding increase in the processing of loan applications, generation of notices, and ultimately an increase in the paperwork associated with the proceeding of insurance claims and the recovery of defaulted and bankrupt loans.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. there is no effect on state General Fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 3% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this regulation. the Kentucky Higher Education Assistance Authority is required pursuant to Title IV, Part B of the federal Act (20 USC §1071, et seq., federal regulations (34 CFR Parts 668 and 682), agreements with the U. S. Secretary of Education, and KRS 164.744(1) to assure that loans insured by the Assistance Authority are reinsured by the federal government and that all participants in the Assistance Authority's loan insurance program meet the requirements set forth in federal law and regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682.

(a) Necessity of proposed regulation if in conflict: PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation generally describes the application process for participation in a voluntary program providing loan insurance benefits. Tiering was not applied, because the regulation sets uniform procedures under federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(10)(ii)

2. State in sufficient detail the state compliance standards: This regulation generally describes the application process for insurance on loans for any student or parent borrowing on behalf of a student who generally meets the requirements of enrollment in an eligible program of study, is making satisfactory academic progress, files statements of educational purpose and compliance with Selective Service Registration, is not in default in repayment of specified loans or grants, is a U.S. citizen or eligible noncitizen, and, where applicable, demonstrates financial need. The regulation requires the borrower to provide his or her name, address, social security number, and driver's license, and to keep the holder of the loan informed of any change of address, name or enrollment status. The borrower must execute a promissory note agreeing to repay the loan and to comply with federal and state regulations.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal Act.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:061. Repeal of 11 KAR 3:060.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. Those changes have necessitated the promulgation of new administrative regulations that would duplicate, and in many instances conflict with provisions of 11 KAR 3:060. This administrative regulation repeals 11 KAR 3:060 to avoid such duplication and conflict.

Section 1. 11 KAR 3:060. Loan Insurance Program, is hereby repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 11, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, January 25, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, January 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: In the current academic year, it is estimated that 55,915 student loans to eligible borrowers will be insured by the Kentucky Higher Education Assistance Authority for 317 participating lenders to meet the costs of attendance at over 6600 eligible educational institutions.

(a) Direct and indirect costs or savings to those affected: None. This regulation repeals a regulation, 11 KAR 3:060, which is being replaced by separate regulations made necessary by recent changes in federal law. Consequently, the repeal of that regulation does not itself impose a cost or create a savings associated with this regulation.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None. This regulation merely repeals a regulation superseded by other regulations in this chapter, and therefore does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None. This regulation merely repeals a regulation superseded by other regulations in this chapter. Consequently, the repeal of the regulation does not, itself, impose a cost or create a savings associated with this regulation.

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None. This regulation merely repeals a regulation superseded by other regulations in this chapter, and therefore does not impose any 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: The only available alternative would have been to attempt to amend 11 KAR 3:060 itself. That regulation contains, by virtue of incorporation by reference, a massive rewrite of all of the federal regulations governing the insured student loan programs. Amending that material incorporated by reference within a very short time frame necessary to implement recent changes in federal law would have been impossible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Since 1988, 11 KAR 3:060 has served as the Authority's single comprehensive insured student loan program regulation. That regulation rewrote, with specified modifications, federal regulations governing insured student loans contained in 34 CFR Parts 668 and 682. Unless repealed, 11 KAR 3:060 could potentially conflict with both current federal law (as revised by PL 102-325) and the Assistance Authority's proposed regulations.

(a) Necessity of proposed regulation if in conflict: PL 102-325,

enacted July 23, 1992, reauthorized the federal act and made substantial changes in the insured student loan programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 11 KAR 3:060 will be repealed by adoption of proposed 11 KAR 3:061.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation merely repeals a regulation superseded by other regulations in this chapter. Therefore, the concept of tiering would not apply to defining terms.

COUNCIL ON HIGHER EDUCATION

13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.020(8)

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY AND FUNCTION: The Council on Higher Education approves the offering of all degree programs at the state-supported institutions of higher education. Unless a temporary waiver is granted by the Council on Higher Education, approval of any new degree program is contingent upon an institution's having met its equal opportunities goals. As required by KRS 164.020(8), this administrative regulation sets forth the terms for determining compliance with an institution's equal opportunity goals and for the granting of temporary waivers to the state-supported institutions of higher education which have not met their goals.

Section 1. Institutional Objectives. (1) The objective for the enrollment of African-American students at a state-supported institution of higher education shall be equal to the percentage of African-American high school graduates within the institution's market area. The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at the state-supported institution of higher education during the fall semester, 1990.

(2) Each institution's objective for the retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's 1987 retention rate for first-year undergraduate Kentucky resident white students.

(3) Each institution's objective for the retention of all undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's 1987 retention rate for all Kentucky resident white undergraduate students.

(4) Each institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be calculated by multiplying the institution's enrollment objective by the institution's retention objective for all undergraduates. However, the objective for Kentucky State University shall be to maintain the level achieved in the 1986-87 school year.

(5) Each institution's objective for the enrollment of Kentucky resident African-American graduate students shall be equal to the institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students. However, Kentucky State University and the community colleges shall be exempt from this objective.

(6) Each institution's objective for the employment of African-Americans in executive, administrative, and managerial positions shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(7) Each institution's objective for the employment of African-American faculty shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

(8) Each institution's objective for the employment of African-Americans in the category of professional nonfaculty not within subsections (6) and (7) of this section shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.

Section 2. Annual Progress. (1) Incremental progress toward achievement of all objectives by school year 1994-95 shall be measured annually. Data from 1987 shall be used as a baseline for measurement.

(2) For each objective, annual progress shall be calculated using one (1) of the following two (2) methods:

(a) When the level of achievement for a particular objective exceeds that of the 1987 baseline, the following equation shall be applied: 100, multiplied by the difference between the percentage attained in the year being measured and the percentage attained in 1987, divided by the difference between the percentage expected by 1994-95 and the percentage attained in 1987.

(b) When the level of achievement for a particular objective falls below that of the 1987 baseline, the following equation shall be applied: 100, multiplied by the difference between the percentage attained in the year being measured divided by the percentage attained in 1987 and one (1).

Section 3. Average Annual Progress. An overall level of annual achievement for an institution shall be established by calculating a simple average of annual progress toward all of the objectives.

Section 4. Automatic Eligibility. (1) Automatic eligibility for the consideration of new degree programs shall exist when:

(a) An institution exhibits progress in six (6) of the eight (8) objectives except for Kentucky State University which shall exhibit progress in five (5) of the seven (7) objectives and except for community colleges which shall exhibit progress in three (3) of the four (4) objectives; and

(b) Average annual progress meets or exceeds forty (40) percent for fiscal year 1991-92; sixty (60) percent for fiscal year 1992-93; eighty (80) percent for fiscal year 1993-94; and, 100 percent for fiscal year 1994-95.

(2) Qualifying for automatic eligibility based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(3) Qualifying for automatic eligibility based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(4) Qualifying for automatic eligibility based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(5) Qualifying for automatic eligibility based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

Section 5. Waivers. (1) If an institution is not automatically eligible under Section 4 of this administrative regulation and intends to submit degree programs to the Council on Higher Education for approval, the institution may request a one (1) year waiver.

(2) A waiver request shall include a resolution submitted to the Council on Higher Education by the institution's governing board and shall be based upon either a quantitative or qualitative assessment of the institution's efforts.

(a) Quantitative basis. A waiver may be granted based upon:

1. Progress in five (5) of the eight (8) objectives except for Kentucky State University which shall exhibit progress in four (4) of the seven (7) objectives, and except for the community colleges which shall exhibit progress in two (2) of the four (4) objectives; and

2. Average annual progress which meets or exceeds thirty (30) percent for fiscal year 1991-92; forty-five (45) percent for fiscal year

1992-93; sixty (60) percent for fiscal year 1993-94; and eighty (80) percent for fiscal year 1994-95.

(b) Qualitative basis.

1. A waiver may be granted based upon the submission of information in support of outstanding efforts that were attempted which have not yet proven to be successful or extraordinary circumstances that precluded success.

2. The submission shall indicate how the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.

3. The submission shall also include specific and quantifiable aspects of the institution's efforts to meet the equal opportunity objectives.

4. Student-related data or plans may include:

a. Commitment of funds to equal opportunity related activities;

b. Financial aid distribution;

c. Student services activities;

d. High school visitations and results; and

e. Academic support services.

5. Employee-related data or plans may include:

a. Number of interviews;

b. Offers made that are accepted or rejected;

c. Utilization of funds to stimulate units to improve their employment data;

d. Special actions for units within the institutions where additional efforts are required; and

e. An evaluation of long-range data trends for those objectives that fell below expectations.

(3) Receiving a waiver based on the analysis of fiscal year 1991-92 data shall mean that an institution may submit degree programs for approval in calendar year 1993.

(4) Receiving a waiver based on the analysis of fiscal year 1992-93 data shall mean that an institution may submit degree programs for approval in calendar year 1994.

(5) Receiving a waiver based on the analysis of fiscal year 1993-94 data shall mean that an institution may submit degree programs for approval in calendar year 1995.

(6) Receiving a waiver based on the analysis of fiscal year 1994-95 data shall mean that an institution may submit degree programs for approval in calendar year 1996.

(7) A waiver shall not be granted in consecutive years.

JOE B. CAMPBELL, Chairperson

APPROVED BY AGENCY: December 3, 1992

FILED WITH LRC: December 7, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 26, 1993, at 10 a.m., at the Council on Higher Education office located at 1050 U. S. 127 South, Suite 101, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1993, 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 administration regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not with to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Roy Peterson, Council on Higher Education, 1050 U. S. 127 South, Suite 101, Frankfort, Kentucky 40601, (502) 564-3553.

REGULATORY IMPACT ANALYSIS

Contact: Roy Peterson

(1) Type and number of entities affected: This regulation affects all eight of the state-supported universities and the fourteen community colleges within the University of Kentucky community college system. The regulation establishes a standard and provides a waiver for the submission of proposed new degree programs for approval by the Council on Higher Education.

(a) Direct and indirect cost or savings to those affected: The goal, commitments, and objectives of equal opportunities in this regulation have applied to the state-supported institutions for several years. The public institutions have filed reports on their progress for several years; therefore, the regulation will result in little additional direct cost or savings for the public colleges and universities.

1. First year: Minimal.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The state-supported universities and community colleges will submit data on a recurring basis. The necessary analysis will be done as part of the council's equal opportunities plan and will be derived from the submitted data. The council will publish annual reports of institutional progress. These activities are already carried out as part of the equal opportunities plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Minor indirect costs to the council will occur due to the computation of progress toward the objectives. Direct publication and distribution costs will be minor and recurring, but these are considered necessary if the council has to carry out its functions.

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The annual status of each college and university, with respect to its eligibility to submit degree programs for approval, will need to be reported to each institution, the council, and the general public on an annual basis.

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

(4) Assessment of alternative methods: reasons why alternatives were rejected: No alternative methods were considered. The colleges and universities have been working with the existing objectives for several years. The computation of a standard and waiver to measure progress and eligibility to submit degree programs, while new, is a minor addition to a well-established process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. The fourteen (14) community colleges and Kentucky State University are exempt from the objective related to the enrollment of Kentucky resident African-American graduate students; the community college educational role is limited to the first two years of college while Kentucky State University has only a limited role in graduate education. The baccalaureate degree objective applies only to the eight universities. The computation with respect to annual progress and average annual progress will be the same for the community colleges and the universities. In computing the average annual progress, the average for Kentucky State University will be based upon seven (7) rather than eight (8) objectives. The average for the community colleges will be based upon four (4) rather than eight (8) objectives. In addition, institutional affirmative action plans and their employment objectives in the several categories are specific, already existing agreements between individual institutions and the Office of Federal Contract Compliance Programs (U.S. Department of Labor) or the Office for Civil Rights (U.S. Department of Education). These plans and their objectives vary from institution to institution. The council accepts the differing affirmative action plans and objectives as necessarily and justifiably different.

DEPARTMENT OF MILITARY AFFAIRS
Division of Disaster and Emergency Services

106 KAR 1:075. Local disaster and emergency services organizational standards.

RELATES TO: KRS 39.483
STATUTORY AUTHORITY: KRS 39.483
NECESSITY AND FUNCTION: KRS 39.483 requires the Division of Disaster and Emergency Services to establish standards for local disaster and emergency services organizations established pursuant to KRS 39.415.

Section 1. In addition to requirements outlined in KRS 39.483, the following requirements shall be met by a local disaster and emergency services organization to retain funding eligibility:

(1) A functional or full scale exercise to test the operations plan shall be conducted and fully documented annually.

(2) A local director, serving in a paid or nonpaid capacity, shall complete the following home study courses:

(a) "Emergency Program Manager: An Orientation to the Position" within four (4) months after appointment.

(b) "Emergency Preparedness USA" within eight (8) months after appointment.

(c) "Hazardous Materials: A Citizen's Orientation" within one (1) year after appointment.

(3) A director serving in a nonpaid capacity whose organization receives funding, shall complete the course "Introduction to Emergency Management", within eighteen (18) months of his appointment date.

(4) A local director whose salary is reimbursed for emergency management services shall complete the following courses. The director shall complete at least one (1) annually.

(a) Introduction to Emergency Management.
(b) Emergency Planning.
(c) Hazardous Material First Responder Awareness Training.
(d) Exercise Design.
(e) Civil Defense: An All Hazards Approach.
(f) Basic Skills in Decision-making and Problem-solving.
(g) Basic Skills in Leadership and Influence.
(h) Basic Skills in Effective Communications.
(i) Basic Skills in Creative Financing.
(j) The Unified Incident Command System Course endorsed by this division.

(5) Each local disaster and emergency services employee, other than the director, whose salary is reimbursed shall complete the home study courses specified in subsection (1) of this section and the course "Introduction to Emergency Management" within eighteen (18) months of their employment date. Thereafter each such employee shall complete one (1) of the courses specified in subsection (4) of this section every two (2) years.

(6) A local director and other paid Disaster and Emergency Services employees shall be given credit under this regulation for any course specified herein successfully completed since January 1, 1984.

(7) Credit for completion of equivalent courses may be granted by the executive director.

Section 2. Reimbursement for attending required courses and workshops shall comply with Finance and Administration Cabinet policies. If availability of funds is limited, reimbursement shall be made for mandatory training first.

Section 3. In addition to the persons listed in KRS 39.483(8), the following persons may have expenses reimbursed for attendance at the Emergency Management Workshop, if funds are available. Reimbursement is limited to three (3) persons from the same county.

(1) Chief or assistant chief of a rescue squad that is affiliated with a local disaster and emergency services organization.
(2) Chief or assistant chief of a fire department.
(3) Chief or assistant chief of a police department.
(4) Director of a local ambulance service.
(5) Director of public works.
(6) Director of emergency medical services.
(7) County disaster and emergency services operations officer.
(8) County disaster and emergency services communications officer.
(9) County disaster and emergency services public information officer.
(10) Chairman or vice-chairman of a local emergency planning committee.

Section 4. The Division of Disaster and Emergency Services shall publicize all available state and federal emergency management courses to all local mayors, county judge/executives, and disaster and emergency services directors by:

(1) Mailing all pertinent information regarding training to them at least forty-five (45) days in advance of classes.

(2) Mailing an annual catalog at the beginning of each DES fiscal year.

Section 5. 106 KAR 1:070 is hereby repealed.

JAMES M. EVERETT, Executive Director
ROBERT L. DEZARN, Major General
APPROVED BY AGENCY: December 11, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1993, at 9 a.m. at the EOC Building, Boone Center, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 1993, 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: Craig T. Martin, Disaster and Emergency Services, Boone Center, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Craig T. Martin

(1) Type and number of entities affected: This regulation applies to local disaster and emergency services directors and paid staff members in each county. There are approximately 126 such members.

(a) Direct and indirect costs or savings to those affected: There are no known direct costs or savings. Expenses for the training required are currently reimbursed by the promulgating agency to the trainee.

1. First year: Indirect costs may occur to members as the required courses are completed.

2. Continuing costs or savings: Same as (1) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No known additional factors will affect costs.

(b) Reporting and paperwork requirements: Those enrolling in the required courses shall complete the proper forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The overall burden on the

promulgating body may increase somewhat as it is anticipated an increased number of DES members will enroll in the various courses.

1. First year: Increased costs for staff to implement needed training may occur.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: No known additional factors will affect costs.

(b) Reporting and paperwork requirements: Staff will process the required paperwork/forms to administer the training.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect upon local revenues; additional state funding may be necessary for this program to enable current staff to provide full implementation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation implements the legislative mandate found in KRS 39.483; therefore no alternatives were contemplated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes or regulations.

(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? The educational requirements in this regulation apply to local directors and paid staff members only, not every individual within a given local organization.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:063. Certificate of experience.

RELATES TO: KRS 325.261

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) "Audit" means an examination of financial statements of an entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(2) "Compilation with disclosures" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements and includes all required disclosures.

(3) "Review" means performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

(4) One (1) year of full-time employment equals 2,080 hours to include the firm or agency's standard illness, vacation and holiday policies.

(5) "Supervision" means a licensed certified public accountant of this or any state coordinating, guiding, inspecting, controlling and evaluating the activity of an employee.

(6) "Third-party reliance" means the trust, dependence or confidence placed by a third-party reader of statements based upon the report issued by an independent certified public accountant.

Section 2. (1) Each certificate applicant shall submit a "Certificate of Experience" (1992). This form is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky, 40202 between 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.261 and 201 KAR 1:050, a certificate shall be submitted by each employer.

(3) All work experience, gained after the awarding of a baccalaureate degree, shall be given credit on an hour-worked-for-an-hour-earned basis.

(4) All work experience gained prior to the awarding of a baccalaureate degree or the completion of baccalaureate course work shall be considered part time.

(a) The employer shall submit a certificate of experience accompanied by a list of hours worked per week.

(b) The hours worked per week shall be calculated by totaling and dividing by eighty (80) to determine the full-time equivalency.

Section 3. Public Accounting Experience. The applicant shall have submitted on his behalf, a certificate of experience as described in Section 1 of this administrative regulation. This certificate shall include the following material verified by the supervising certified public accountant:

(1) All experience was performed under the supervision of a CPA as described in Section 1 of this administrative regulation;

(2) The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;

(3) A minimum of 500 hours in preparing audits, reviews and compilations with disclosures;

(4) If the experience included participation in audits, reviews, and compilations with disclosures, the applicant's total experience shall include ten (10) of the following analytical techniques and procedures which shall be affirmed:

(a) Review, testing and evaluation of internal control policies and procedures related to sales and revenue, costs and expenses, and payroll;

(b) Verification of accounts receivable;

(c) Review of inventory procedures and verification of physical inventories;

(d) Review of reconciliation of client bank accounts;

(e) Testing inventory valuation and pricing;

(f) Testing cost and depreciation of fixed assets;

(g) Testing prepaid and intangible assets and deferred charges;

(h) Review and verification of accounts payable;

(i) Review of the adequacy of accrual and allowance provisions;

(j) Review of preparation of income tax provision;

(k) Search for unrecorded liabilities;

(l) Analysis and verification of changes in equity accounts or fund balances;

(m) Application of appropriate analytical review procedures to revenue and expenses;

(n) Testing of revenue and purchase cutoff;

(o) Review for significant subsequent events;

(p) Review of pertinent legal documents;

(q) Evaluations of disclosures relating to commitments and contingencies; and

(r) Review to determine compliance with government standards;

(5) The applicant's working titles during employment; and

(6) The supervising CPA shall sign the certificate of experience attesting to the truth and accuracy of the statements made regarding the applicant's experience.

Section 4. State Government Experience. The applicant shall have submitted on his behalf, a certificate of experience as described in Section 1 of this administrative regulation. This certificate shall

include the following material verified by the supervising certified public accountant:

(1) All experience was performed under the supervision of a CPA or a Kentucky public accountant as described in Section 1 of this administrative regulation;

(2) The month, day and year the state government employment began, and the month, day and year the employment was terminated or the experience was completed; (3) A minimum of 500 hours of performing audits;

(4) If the experience included participation in audits, the applicant's total experience in ten (10) of the following analytical techniques shall be affirmed:

(a) Review, testing and evaluation of internal control policies and procedures related to sales and revenue, costs and expenses, and payroll;

(b) Verification of accounts receivable;

(c) Review of inventory procedures and verification of physical inventories;

(d) Review of reconciliation of client bank accounts;

(e) Testing inventory valuation and pricing;

(f) Testing cost and depreciation of fixed assets;

(g) Testing prepaid and intangible assets and deferred charges;

(h) Review and verification of accounts payable;

(i) Review of the adequacy of accrual and allowance provisions;

(j) Review of preparation of income tax provision;

(k) Search for unrecorded liabilities;

(l) Analysis and verification of changes in equity accounts or fund balances;

(m) Application of appropriate analytical review procedures to revenue and expenses;

(n) Testing of revenue and purchase cutoff;

(o) Review for significant subsequent events;

(p) Review of pertinent legal documents;

(q) Evaluations of disclosures relating to commitments and contingencies; and

(r) Review to determine compliance with government standards;

(5) The applicant's working titles during employment; and

(6) The supervising CPA shall sign the certificate of experience attesting to the truth and accuracy of the statements made regarding the applicant's experience.

Section 5. Internal Revenue Service. The applicant shall have submitted on his behalf, a certificate of experience as described in Section 1 of this administrative regulation. This certificate shall include the following material verified by the Chief of the Examinations Division:

(1) The month, day and year the employment as a field audit agent began and the month, day and year the employment was terminated or the experience was completed;

(2) The month, day and year the applicant was employed at GS-11;

(3) A list of the lines of commercial or industrial businesses which the applicant audited in accordance with KRS 325.261(2)(a); and

(4) An applicant, who hold's a master's degree in accounting or business administration or a master's degree of their equivalent approved by the board, shall have the experience requirement reduced by one (1) year.

Section 6. Documentation and Verification of Applicant Experience. (1) Any certified public accountant who signs a certificate of experience shall maintain supporting documentation of the applicant's experience until the applicant is granted a certificate.

(2) The board shall consider any false or misleading statement made by a CPA or public accountant on a certificate of experience as a violation of KRS 325.340(1)(h).

(3) Inspection of supporting documentation may be made by the board or it's designee upon receipt of the application, prior to it's approval.

Section 6. 201 KAR 1:062 is hereby repealed.

ASA L. HORD, President

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 29, 1993, at 9 a.m. at the administrative offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by January 24, 1993, 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 wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, KY 40202, (502) 588-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: 600 CPA candidates annually.

1. First year: Should allow candidates in smaller CPA firms to complete the experience in less time by allowing compilations with disclosures.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): It will also reduce costs to CPA firms who will not undertake audits simply to obtain experience for candidates.

(b) Reporting and paperwork requirements: No impact.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No impact either negatively or positively.

2. Continuing costs or savings: No impact either negatively or positively.

3. Additional factors increasing or decreasing costs: No impact either negatively or positively.

(b) Reporting and paperwork requirements: No impact either negatively or positively.

(3) Assessment of anticipated effect on state and local revenues: There will not be a change in state revenues and local revenues are not affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methodology is possible for meeting statutory requirements.

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

(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: No

TIERING: Was tiering applied? No. The intent of this requirement is to expand the 500 hours of financial reporting to allow compilations with disclosures for all 600 CPA certificate candidates annually.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:210. Patient records and patient counseling.

RELATES TO: KRS 315.191(1), (5), (6), 42 CFR Part 456
STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), (5), 42 CFR Part 456
NECESSITY AND FUNCTION: KRS 315.191(1), (56), 42 CFR Part 456 mandates that pharmacists implement drug utilization reviews and provide patient counseling to those recipients of health-care benefits for which federal funds are allocated. This administrative regulation provides for this mechanism and broadens its magnitude by rendering this valuable service available to all Kentucky's citizenry, equitably.

Section 1. Patient Records. (1)(a) A patient record system shall, with the exercise of professional judgement, be maintained by a pharmacy for patients for whom prescriptive drug orders are dispensed at that pharmacy location.

(b) A pharmacist, with the exercise of professional judgement, shall establish a procedure for obtaining, recording, and maintaining information required for a patient record.

(c) A pharmacist, or his designee, shall obtain, record, and maintain the information for a patient record.

(d) A patient record shall:

1. Be readily retrievable by manual or electronic means;
2. Enable the pharmacist to identify previously dispensed drugs and known disease conditions;
3. Enable the pharmacist to determine the impact of previously dispensed drugs and known disease conditions upon the newly submitted prescriptive drug order; and
4. Be maintained for not less than 180 days from the date of the last entry.

(2) A patient record shall include:

(a) Full name of patient for whom the drug is intended;
(b) Address and telephone number of the patient;
(c) Patient's age or date of birth;
(d) Patient's gender;
(e) A list of all prescriptions obtained by the patient at that pharmacy location for the past twelve (12) months by:

1. Prescription number;
2. Name and strength of medication;
3. Quantity;
4. Date received;
5. Identity of prescriber; and
6. Comments or other information as may be relevant to the specific patient or drug; and

(f) Individual medical history if significant, including known disease states, known allergies, idiosyncracies, reactions or conditions relating to prospective drug use and drug regimen reviews.

Section 2. Patient Counseling. (1) The pharmacist shall offer to counsel a patient on matters which he believes will optimize drug therapy with each patient or caregiver:

(a) Upon the presentation of an original prescription order; and
(b) On refill prescriptions, as professional discretion dictates.

(2)(a) The offer shall be made by the pharmacist in a face-to-face communication with the patient or caregiver, unless, in the professional judgement of the pharmacist, it is deemed impractical or inappropriate.

(b) If deemed impractical or inappropriate, the offer to counsel may be made:

1. By the pharmacist designee;
2. In written communication;
3. By telephone through access to a telephone service that is toll-free for long distance calls, unless the primary patient population is accessible through a local, measured, or toll-free exchange; or
4. In another manner determined by the pharmacist to be appropriate.

(3) Patient counseling shall be:

(a) In person when practical; or
(b) With reasonable effort, by telephone.

(4) The pharmacist shall include the following elements of patient counseling that he has determined are appropriate:

(a) The name and description of the drug;
(b) The dosage form, dose, route of administration, and duration of therapy;
(c) Special directions and precautions;
(d) Common and clinically significant adverse effects, interactions, or contraindications that may be encountered, including their avoidance and the action required should they occur;
(e) Techniques for self-monitoring of drug therapy;
(f) Proper storage;
(g) Refill information;
(h) Action to be taken in event of a missed dose;
(i) His comments relevant to the individual's therapy; and
(j) Any other information peculiar to the specific patient or drug.

(5) If a pharmacist determines that it is appropriate, he may supplement patient counseling with additional forms of patient information, such as:

(a) Written or printed information leaflets;
(b) Pictogram labels; and
(c) Video programs.

(6) Mail-order pharmacies shall be subject to the same counseling requirements as any other pharmacy.

Section 3. Confidentiality. (1) A patient record shall be held in confidence.

(2) It shall be communicated or released:

(a) To the patient;
(b) As the patient directs; or
(c) As prudent, professional discretion dictates.

Section 4. Prospective Drug Use Review. (1) A prospective drug use review shall be conducted by a pharmacist prior to dispensing.

(2) It shall include an assessment of a patient's drug therapy and the prescription order.

(3) A prospective drug use review shall include a review by the pharmacist of the following:

(a) Known allergies;
(b) Rationale for use;
(c) Proper dose, route of administration, and directions;
(d) Synergism with currently employed modalities;
(e) Interaction or adverse reaction with applicable:

1. Drugs;
2. Foods; or
3. Known disease states;

(f) Proper utilization for optimum therapeutic outcomes; and
(g) Clinical misuse or abuse.

Section 5. Documentation of Counseling. (1) A record that the patient refused the pharmacist's offer to counsel shall be maintained for one (1) year.

(2) If there is no record that the patient refused the pharmacist's offer to counsel, there shall be a presumption that:

(a) The offer to counsel, as required in Section 2 of this administrative regulation, was made and accepted; and
(b) The counseling was provided.

Section 6. The provisions of this administrative regulation shall not apply:

(1) To inpatients of a hospital or institution, if other licensed health-care professionals are authorized to administer the drugs; or

(2) If there is documentation that the patient or caregiver refused consultation.

TOM M. HOUCHENS, President

APPROVED BY AGENCY: December 9, 1992

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

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on January 26, 1993, at 10 a.m. (EST), at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Julio Polio, Interim Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-3833.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Julio Polio

(1) Type and number of entities affected: 3,000 pharmacists; 1100 pharmacies.

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

1. First year: Pharmacies - $1,600,000 (pharmacists' time and computer software additions).

2. Continuing costs or savings: $1,450,000 (pharmacists' time and computer maintenance).

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Possible added investigations and hearings of complaints.

(a) Direct and indirect costs or savings: Approximately 5% increase.

1. First year: $1,500

2. Continuing costs or savings: $2,000

3. Additional factors increasing or decreasing costs: Administrative costs and costs for legal counsel.

(b) Reporting and paperwork requirements: Documentation in office files.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods possible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Implementation of this requirement is mandated law for recipients of federally-funded benefits. Kentucky law may not discriminate for any segment of society.

TIERING: Was tiering applied? No. N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Relates to 42 CFR Part 456 (PL 101-508 Sec. 4401).

2. State compliance standards. This administrative regulation provides for the implementation of Drug Utilization Review and requires pharmacists to optimize therapy for all Kentucky citizens by the verbal communication of patient counseling in the proper use of drugs and devices.

3. Minimum or uniform standards contained in the federal mandate. The federal act is written for recipients of health-care benefits for which federal funds are allocated, and the states are required to adopt those minimum standards as set forth.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Under state law the agency is required to administer equally to the needs and in protection of all consumers. The authority to effect this is granted to the agency under KRS Chapter 315.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

KENTUCKY REAL ESTATE COMMISSION

201 KAR 11:350. Seller's disclosure of conditions form.

RELATES TO: KRS Chapter 324

STATUTORY AUTHORITY: KRS 324.360

NECESSITY AND FUNCTION: KRS 324.360 requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and sets forth matters which the form shall contain and allows the inclusion of additional matters. The following form shall be completed and signed as provided in KRS 324.360, by sellers of residential real estate when licensed agents are involved. If the seller refuses to complete and sign this form, this refusal shall be communicated by the licensed agents in writing to all prospective buyers. The completed and signed form shall be given by the agents to all prospective buyers.

Section 1. The form shall be as follows:

"SELLER DISCLOSURE OF PROPERTY CONDITION

PROPERTY ADDRESS: _____

PURPOSE OF STATEMENT: Completion of this form will satisfy the requirements of Chapter 324 of the Kentucky Revised Statutes which mandates the seller's disclosure of the condition of and information about the property he or she is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement is not a warranty of any kind by the seller or seller's agent and is not intended as a substitute for any inspection or warranty the purchaser may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages with your signature if necessary. (4) Complete this form yourself. (5) If some items do not apply to your property, write "not applicable". (6) If you do not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property and that this information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to any person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are representations made by seller and are not the representations of the agent. The agent has no independent knowledge of the condition of the property except that which is set out on this form.

PROPERTY CONDITIONS, IMPROVEMENTS AND ADDITIONAL INFORMATION:

1. Has the basement ever leaked? __Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired or treated? ___Yes ___No ___Unknown
2. Has the roof ever leaked? ___Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired? ___Yes ___No ___Unknown
   Approximate age of the roof: _____Years ___Unknown
3. What is the source of the water supply? _____
   Has the water been tested? ___Yes ___No ___Unknown
   If yes, will you provide a copy of the test results? ___Yes ___No
4. Have you ever found the water supply to be inadequate? ___Yes ___No If yes, explain:_____
5. What is the source of the property's sewage service? ___Municipal or other sewer system ___Septic tank/septic system ___Other
6. Has your sewer service ever been interrupted? ___Yes ___No ___Unknown
7. Has your sewage system been repaired or treated? ___Yes ___No If yes, approximate date of repair: _____
8. Plumbing system: Are you aware of any leaks in your plumbing system? ___Yes ___No ___Unknown If yes, describe the location and problem: _____
9. Electrical System: Is the electrical system more than twenty years old? ___Yes ___No ___Unknown
10. Have you found it necessary to have any portion of your electrical system repaired by an electrician or other professional? ___Yes ___No ___Unknown
11. Heating System: Type/approximate age_____
12. Cooling System: Type/approximate age_____
13. Have you had your heating or cooling system repaired or had maintenance work performed on your heating or cooling system? ___Yes ___No ___Unknown If yes, the approximate date of the repair or maintenance:

The seller has owned the property since _____ (date) and makes these representations only since that date and only prior to the date this form is completed. If any changes occur in the structure or mechanical or component system of this property from the date of this form to the date of closing, seller will immediately disclose the changed circumstances to the buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or the broker's agent.

Seller Date Seller Date

Buyer Date Buyer Date

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES HIS UNDERSTANDING THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller: _____

Date: _____

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent: _____

Date: _____

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer Date Buyer Date

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER."

R. J. ROBERTS, Chairman

APPROVED BY AGENCY: November 19, 1992

FILED WITH LRC: November 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1993, at 10 a.m. at Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this committee in writing by January 20, 1993, 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: Bernadette Gradney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suit 201, Louisville, Kentucky 40223, (502) 425-4273.

REGULATORY IMPACT ANALYSIS

Contact person: Bernadette Gradney

(1) Type and number of entities affected: 14,423 - actively licensed real estate agents as of November 9, 1992.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs or savings.

1. First year: There will be no direct or indirect costs or savings.

2. Continuing costs or savings: There will be no direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs or competition.

(b) Reporting and paperwork requirements: Licensed agents will deliver the sellers disclosure of property condition form to sellers, will deliver the completed form to buyers and will maintain the form on file for 4 years.

(2) Effects on the promulgating administrative body: There will be no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: The only cost will be the printing costs of supplying the form to agents.

1. First year: Printing cost of supplying the form to agents.

2. Continuing costs or savings: Printing cost of supplying the form to the agents.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements to the agency.

(3) Assessment of anticipated effect on state and local reve nues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute is very clear that this form be promulgated and leaves no room for alternatives.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Is tiering applied? No. Tiering was not applied because the statute is quite clear on which transactions the form shall be used in.

GENERAL GOVERNMENT CABINET
Board of Registration for
Professional Engineers and Land Surveyors

201 KAR 18:180. Firm registration.

RELATES TO: KRS 322.060

STATUTORY AUTHORITY: KRS 322.060, 322.070, 322.290

NECESSITY AND FUNCTION: KRS 322.060 authorizes the registration of engineering corporations, partnerships and firms doing business in this Commonwealth. These administrative regulations are intended to outline those procedures not defined in KRS 322.060.

Section 1. Applications. Applications for permits to practice engineering shall be made on forms provided by the board. Applications made on other than the applicable forms will not be accepted for filing by the board. Applicants may attach additional sheets to the form if necessary for other evidence, but such attached sheets shall conform to the same size as the printed forms and shall be securely attached. The board may require clarification or expansion of any of the information on the application in order to evaluate fully the applicants' qualifications.

Section 2. Fees. The fee for an initial permit of a corporation, partnership or firm to practice engineering in this Commonwealth shall be $200. Renewals of a permit to practice engineering shall require the payment of $100 to be paid prior to the renewal of said permit.

Section 3. Licensing Certificates. Corporations, partnerships or firms permitted to do business shall be issued a "permit", renewable annually upon payment of the renewal fee and compliance with all other provisions of this act and these administrative regulations.

Section 4. Serial Numbers. Permits, serially numbered in the order in which approved shall be issued to successful applicants.

Section 5. Effective Dates. Applications for permits shall be available from the board office effective January 1, 1993. Applications for initial permits under this act and these regulations shall be accepted by the board until June 30, 1993. Applications approved during this time period will be in effect for the 1993-1994 fiscal year. After July 1, 1993, no firm, corporation partnership desiring to practice or offer to practice engineering in this Commonwealth shall do so without first securing a permit from this board. Renewals shall be on a yearly cycle July 1 through June 30. Renewal forms shall be mailed to permit holders one (1) month prior to the expiration date of the permit.

Section 6. Permit application, 1993 edition and permit certificate, 1993 edition are incorporated herein by reference and are available for inspection at the board office, 160 Democrat Drive, Frankfort, Kentucky 40601.

GEORGE M. ELY, JR., Chairman

APPROVED BY AGENCY: October 27, 1992

FILED WITH LRC: December 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1993, at 1:30 p.m. at the office of the board, The Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 1993, 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: Larry S. Perkins, Executive Director, State Board of Registration of PE/LS, 160 Democrat Drive, Frankfort, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins

(1) Type and number of entities affected: Approximately 300.

(a) Direct and indirect costs or savings to those affected: Registration fee of $200.

1. First year: $200

2. Continuing costs or savings: $100 succeeding years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application to be filed with board and updates as changes are made in firm personnel.

(2) Effects on the promulgating administrative body: Administrative work will for the most part be done by computer.

(a) Direct and indirect costs or savings: We believe present staff can handle the work.

1. First year: Same

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Should be none.

(b) Reporting and paperwork requirements: Most of recordkeeping will be done on computer.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All registrants are treated equally.

GENERAL GOVERNMENT CABINET
Board of Registration for
Professional Engineers and Land Surveyors

201 KAR 18:190. Continuing education.

RELATES TO: KRS 322.290(h)

STATUTORY AUTHORITY: KRS 322.290(h)

NECESSITY AND FUNCTION: In order to safeguard life, health, property, and to promote the public welfare, the practice of Professional Land Surveying in Kentucky requires continuing education in accordance with KRS 322.290(h) and this administrative regulation.

Section 1. (1) Scope. Continuing education obtained by a registrant should maintain, improve or expand skills and knowledge

obtained prior to initial licensure or develop new and relevant skills and knowledge.

(2) Definitions. Terms used in this section are defined as follows:

(a) Continuing education - continuing education as referred to in KRS 322.290(h) shall hereinafter be referred to as continuing professional development.

(b) Professional development hour (PDH) - a contact (clock) hour consisting of not less than fifty (50) minutes of instruction or presentation and which further meets the requirements of this administrative regulation.

(c) Sponsor - an individual, organization, association, institution or other entity which provides a board-approved activity for the purpose of fulfilling the continuing professional development requirements of this administrative regulation.

(d) Board - the Kentucky Board of Registration for Professional Engineers and Land Surveyors, the legal state entity having jurisdiction to register individuals to practice the profession of land surveying and to discipline those registrants who violate the applicable laws or administrative regulations promulgated by the board.

(e) Registrant - a person or individual registered as a professional land surveyor by this board.

(3) Requirements. To demonstrate that a professional land surveyor maintains an acceptable level of competency, a registrant must obtain the number of professional development hours (PDHs) per year as shown below. This requirement must be satisfied during the period from January 1 through December 31 except for the carry-over permitted and outlined hereinafter.

(a) A registrant licensed as a professional land surveyor must earn a minimum of eight (8) PDH per year except for the carry-over permitted. The number of professional development hours which may be carried forward into the next year shall not exceed one-half (1/2) of the annual requirement.

(b) A professional land surveyor is required to earn a minimum of two (2) PDH credits by attending a board-sponsored seminar on the standards of practice and two (2) PDH credits by attending a board-approved seminar on professional ethics for land surveyors at least every four (4) years.

(4) Implementation schedule.

Renewal Date	Registrant Group	Continuing Development Period	Required PDHs
7/1/93	A-K	1/91 to 12/92	0
7/1/94	L-Z	1/93 to 12/93	8
7/1/95	A-K	1/93 to 12/94	16

(5) Activities. Continuing professional development activities which satisfy the requirements shall include, but not be limited to:

(a) Successfully completing college or university courses;

(b) Successfully completing courses which are awarded continuing education units (CEUs);

(c) Attending seminars or short courses;

(d) Attending or using tutorials, correspondence courses, televised courses or videotaped courses;

(e) Attending in-house programs sponsored by corporations or other organizations;

(f) Teaching or instructing as described in paragraphs (a) through (e) of this subsection;

(g) Authorizing published papers, articles, or books;

(h) Making presentations at technical or professional meetings;

(i) Attending program presentations at related technical or professional meetings.

All such activities as described in paragraphs (a) through (i) of this subsection must be relevant to the practice of land surveying and must contain technical, ethical, or managerial content. All such activities as described in paragraphs (c) through (i) of this subsection must have board approval of the number of PDHs awarded. Repetitive teaching and/or repetitive presentation of the same material will not satisfy this requirement; credit will only be allowed for the first presentation of such material.

(6) Criteria. Continuing professionai development activities must meet the following criteria:

(a) The content of each presentation is well-organized and presented in a sequential manner.

(b) The presentation will be made by persons who are well-qualified by education or experience.

(c) There is a provision for individual participant registration which will include information required for recordkeeping and reporting.

(7) Units. The conversion of PDH units from other units is as follows:

1 University semester hour of credit . . . . 15 PDHs
1 University quarter hour of credit . . . . . 10 PDHs
1 Continuing Education Unit (CEU) . . . . 10 PDHs
1 Hour of acceptable professional development activity . . . . . 1 PDH

(8) Credits. Professional development hours of credit for qualifying courses successfully completed which offer semester hour, quarter hour, or CEU credit are as specified above. All other activities permit the earning of one (1) PDH of credit for each contact hour with the following exceptions:

(a) Teaching or instructing qualifying courses or seminars or making presentations at technical or professional meetings can earn PDH credit at twice that of participants.

(b) Authorship of papers, articles, or books cannot be claimed until actually published. Credit earned will equal preparation time spent not to exceed twenty-five (25) PDH per publication.

(c) The board does not encourage meeting the professional development requirements through correspondence courses. Correspondence course PDH may be acceptable; however, the registrant should submit supporting documentation to demonstrate high-quality education from the course.

(9) Exemptions. A registrant may be exempt from the professional development requirements for one (1) of the following reasons:

(a) New registrants by way of examination or reciprocity shall be exempt for the calendar year in which they become registered by this board.

(b) A noncareer military registrant serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year.

(c) A registrant employed as a professional land surveyor and assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year shall be exempt from obtaining the professional development hours required during that year.

(d) Registrants affected by physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(e) Registrants who apply for reinstatement after allowing their registration to expire or having had their registration revoked or suspended must earn the required professional development hours for each inactive year, in addition to any other terms and conditions which were mandated by the board at the time of said revocation or suspension, not to exceed the annual professional development requirement for four (4) years prior to reinstatement being granted; this requirement shall be in addition to such other conditions of reinstatement as are provided within KRS Chapter 322 and 201 KAR Chapter 18.

(10) Reciprocity. Continuing professional development requirements may be met without completing the entire renewal form if a registrant resides in another state or jurisdiction which is listed by the Kentucky board as having continuing professional development

requirements acceptable to the Kentucky board and the registrant certifies in the appropriate section that all continuing professional development and registration requirements for that state or jurisdiction have been met.

(11) Forms. All renewal applications will require the completion and prefiling of a continuing professional development form specified by the board outlining the PDH credit claimed. The required form must be completed and returned to the board office by January 15 of the same year as the registrant's renewal date. The registrant must supply sufficient detail on the form to permit audit verification and must sign and seal the certification on the continuing professional development form.

(12) Records. Maintaining records which can be used to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

(a) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;

(b) Attendance verification records in the form of completion certificates, signed attendance receipts, paid receipts, a copy of a listing of attendees signed by a person in responsible charge, or other documents supporting evidence of attendance. These records must be maintained for a period of four (4) years and copies must be furnished to the board for audit verification purposes if requested.

(13) Audit. The board shall audit at least five (5) percent of the registrants responding in each renewal period. Additionally, the board shall audit all those registrants who fail to file the required certification forms by January 15 of the year of the registrant's renewal. The audits will be conducted by the board and notice of any disallowance or deficiency will be forwarded to the registrant by April 1. In addition, the board shall audit individual registrants as a part of all disciplinary reviews of said registrant.

(14) Disallowance. If the board disallows claimed PDH credit, pursuant to an audit, the registrant shall have 120 days after notification of the deficiency to substantiate the original claim or to earn other credit to meet the minimum requirement.

(15) Failure to comply. If the registrant fails to furnish the required continuing professional development form, properly completed and signed, or fails to furnish copies of the supporting records pursuant to a board audit, the right to practice as a registered professional land surveyor in the Commonwealth of Kentucky shall expire on the registrant's next renewal date. If the registrant fails to correct any deficiency of the required professional development hours within the grace period granted by the board pursuant to an audit, the right to practice as a registered professional land surveyor in the Commonwealth of Kentucky may be revoked or suspended.

(16) Incorporation by reference. Continuing professional development forms are herein incorporated by reference and made a part hereof.

GEORGE M. ELY, JR., Chairman

APPROVED BY AGENCY: October 27, 1992

FILED WITH LRC: December 14, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1993, at 1:30 p.m. at the office of the board, The Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 1993, 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: Larry S. Perkins, Executive Director, State Board of Registration of PE/LS, 160 Democrat Drive, Frankfort, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins

(1) Type and number of entities affected: 1200 land surveyor registrants.

(a) Direct and indirect costs or savings to those affected: May be some costs in obtaining CEU hours, part of which can be offset by tax deduction.

1. First year: Same

2. Continuing costs or savings: Same

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

(b) Reporting and paperwork requirements: Regulation requires some recordkeeping for the registrants.

(2) Effects on the promulgating administrative body: Most administrative recordkeeping can be done on computer and by existing personnel.

(a) Direct and indirect costs or savings: Same

1. First year: Same

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Aware of no additional factors.

(b) Reporting and paperwork requirements: Most of recordkeeping will be done on computer.

(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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All registrants are treated equally.

TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF MAINTENANCE

603 KAR 5:301. Weight classification of the state-maintained system of highways.

RELATES TO: KRS 189.222

STATUTORY AUTHORITY: KRS 189.222

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of the Transportation Cabinet to establish by official order reasonable weight limits for all highways included in the state-maintained system of highways. This administrative regulation is promulgated to identify and incorporate by reference the Official Order and Guidance Manual setting forth each road in the state-maintained system and to indicate the classification of each. The classification of each highway segment in conjunction with 603 KAR 5:066 establishes the weight limit for trucks using each road segment.

Section 1. (1) The Official Order 94422 of the Transportation Cabinet as authorized on September 10, 1992 and adopted in the "Truck Weight Classification Guidance Manual" on September 25, 1992 is hereby incorporated by reference as a part of this administrative regulation. This Official Order and Guidance Manual shall govern the weight classification of each highway segment in the state-

maintained system of highways.

(2) A copy of the Guidance Manual incorporated by reference may be viewed at any of the Department of Highways district offices or Department of Vehicle Regulation weigh stations. It may be viewed, copied or purchased for twelve (12) dollars from the Division of Management Services, Tenth Floor, 501 High Street, Frankfort, Kentucky 40622. This purchase price includes all subsequent amendments to the Official Order and Guidance Manual. The telephone number of the Division of Management Services is (502) 564-6927. It's hours of operation are 8 a.m. until 4:30 p.m. eastern time on weekdays.

Section 2. Any state-maintained highway segment not specifically identified in Official Order 94422 shall have an "A" highway classification.

J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Deputy Secretary, Commissioner of Highways
DON C. KELLY, Secretary

APPROVED BY AGENCY: November 19, 1992

FILED WITH LRC: November 19, 1992 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 27, 1993 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 January 22, 1993 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 January 22, 1993. 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 January 22, 1993. 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, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All operators in Kentucky of motor vehicles with a gross weight rating in excess of 36,000 pounds.

(a) Direct and indirect costs or savings to those affected: Indirect savings results from including all of the road segments recently completed in this administrative regulation. Without the roads being listed in the Official Order incorporated in this administrative regulation, legally they are not open to use by any motor vehicle with a gross weight above 36,000 pounds. Practically speaking, no one would object to the use of trucks on one of the new bypasses listed in the official order incorporated by reference. The indirect savings is the specification of the highways which can legally be used by the trucks with higher weights.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: There will be a slight increase in productivity with the opening of the new highway segments on which heavier vehicles are allowed to operate. However, determining amounts is impossible. Many times the highway segments are constructed specifically for heavier vehicles or to alleviate traffic congestion.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Any highway in the state-maintained system should be listed in this the Official Order incorporated in this administrative regulation because the least gross weight allowed by this Official Order on a state-maintained highway is 44,000 pounds compared to 36,000 pounds on roads not listed.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The roads which have been transferred from the state-maintained system of highways to county ownership legally have a weight limit of 36,000 pounds. While practically speaking, no one is likely to be issued a citation for operating an 80,000 pound tractor-semi-trailer combination on a county road accessing a landfill, such a citation for overweight would be valid. Kentucky state law does not give county governments the ability to establish a weight limit higher than 36,000 pounds on any local road, regardless of its weight bearing capabilities. Cities, however, are given this ability by KRS 189.280(3).

Tiering: Was tiering applied? Yes. All highway segments listed have been tiered with the assignment of a classification based on their weight bearing capabilities.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau for Learning Results Services

703 KAR 4:010. The formula for determining successful schools.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.645, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools must be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "Accountability index" means the statistic which is the average of the cognitive and noncognitive indices for a school.

(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.

(3) "Cognitive index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require short written answers.

(5) "Declines by five (5) percent or more" means obtains an average accountability index which is five (5) or more points below its baseline for that biennium.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than five (5) points below its baseline for that biennium.

(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its threshold for that biennium.

(8) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require short written answers.

(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(10) "Percentage of successful students" means the "percentage of successful students" statistic, which shall also be referred to as the accountability index.

(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(13) "Portfolio scores" means the scores assigned by teachers to a collection of a student's best work in a given content area.

(14) "Threshold" means the accountability index score which describes the amount of growth required for a school during each year of the biennium.

Section 2. The data used in the formula for determining successful schools shall be the cognitive and noncognitive data gathered in the statewide assessment program during each biennium pursuant to KRS 158.6453.

Section 3. For the 1992-94 biennium the baseline shall be based on data from the 1991-92 assessment program. For subsequent biennia the baseline shall be based on the average of the two (2) years of assessment data for the most recent previous biennium.

Section 4. The points assigned to each performance level for purposes of computing the cognitive indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the cognitive, noncognitive and accountability indices the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the cognitive index for each content area (writing, reading, mathematics, science, and social studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) Writing: portfolio scores - 100 percent;

(2) Reading; common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(3) Mathematics: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

(4) Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent; and

(5) Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

Section 7. Once the percentage of students at each performance level in each content area has been calculated, each percentage shall be multiplied by the appropriate points described in Section 4 of this administrative regulation and transformed to the scale described in Section 5 of this administrative regulation.

Section 8. The values for attendance rate and transition rate shall be the actual percentage reported. The values for retention rate and dropout rate shall be 100 minus the actual percentage reported.

Section 9. The weights assigned to each noncognitive variable shall be:

(1) Grade 4: attendance rate - eighty (80) percent and retention rate - twenty (20) percent;

(2) Grade 8: attendance rate - forty (40) percent, retention - forty (40) percent, and dropout rate - twenty (20) percent; and

(3) Grade 12: attendance rate - twenty (20) percent, retention - five (5) percent, dropout rate - thirty-seven and five-tenths (37.5) percent, and transition rate - thirty-seven and five-tenths (37.5) percent.

Section 10. To compute the noncognitive index the weights for each noncognitive variable described in Section 9 of this administrative regulation shall be multiplied by the value for each noncognitive variable described in Section 8 of this administrative regulation.

Section 11. To compute the accountability index the cognitive index for each content area and the noncognitive index shall be averaged.

Section 12. A local district's accountability index shall be the weighted average of its schools' accountability indices.

Section 13. By January of the first school year in each biennium, the board shall approve a procedure for the calculation of a threshold for each school. A local district's threshold shall be the weighted average of its schools' threshold. For the 1992-94 biennium, a school's threshold shall be its 1991-92 accountability index plus one-tenth (0.1) the difference between 100 and the school's 1991-92 accountability index.

Section 14. To determine whether a school or district is successful, its accountability index for the two (2) years of the biennium shall be averaged and compared to its threshold calculated from the results of the previous biennium. Schools and districts whose average accountability index is equal to or greater than its threshold shall be declared successful.

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: December 14, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1993, 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 January 16, 1993, 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: Ed Reidy

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: By January of the first school year in each biennium the state board shall approve a procedure for calculating a threshold for each school.

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The administrative regulation applies equally to all entities regulated by it.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau for Learning Results Services

703 KAR 4:040. Interim methods for verifying successful completion of the primary program.

RELATES TO: KRS 158.030, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 158.030

NECESSITY AND FUNCTION: KRS 158.030 requires the State Board for Elementary and Secondary Education to promulgate an administrative regulation establishing methods for verifying successful completion of the primary school program. Successful completion must be defined in terms of student achievement of the goals set forth in KRS 158.6451.

Section 1. The determinations of successful completion of the primary program shall be made on an individual student basis.

Section 2. Ongoing evidence to support the determination shall include teacher observations and anecdotal records, student products or performances, and evidence of student self-reflection or assessment.

Section 3. The development of the student exiting the primary program shall be consistent with performance expectations which would support student success in the fourth grade.

Section 4. A school team, which includes the parent of the identified child, will consider and recommend the appropriate early or delayed exit for any student in the primary program. Such review will take place at least thirty (30) days before such decision takes effect.

Section 5. (1) Consistent with the six (6) learning goals of KRS 158.6451, the following shall be the focus for determining student eligibility to exit the primary program:

(a) Student expresses himself clearly and effectively in oral and written form;

(b) Student processes oral and written information as evidenced through listening and reading;

(c) Student demonstrates confidence in his ability to communicate;

(d) Student applies mathematical procedures to problem-solving;

(e) Student applies mathematical concepts including computation, measurement, estimation, and geometry;

(f) Student collects, displays, and interprets data;

(g) Student demonstrates use of monetary values in an economic system;

(h) Student demonstrates appropriate and relevant investigation skills to solve specific problems in real life situations;

(i) Student creatively expresses ideas and feelings;

(j) Student applies democratic principles in relationships with peers;

(k) Student identifies contributions of diverse individuals, groups, and cultures;

(l) Student demonstrates responsibility for personal belongings;

(m) Student shows respect for the property and rights of others;

(n) Student displays self-control and self-discipline;

(o) Student accesses appropriate resources for learning in school, at home, and in the community;

(p) Student participates in group activities cooperatively;

(q) Student chooses appropriate processes and strategies to solve given problems; and

(r) Student applies previously learned knowledge and concepts to new situations.

Section 6. To determine whether students can accomplish the above, teachers shall:

(1) Collect a variety of student work samples;

(2) Complete observational checklists of academic, social, and developmental progress; and

(3) Maintain anecdotal records.

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: December 14, 1992

FILED WITH LRC: December 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1993, 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 January 16, 1993, 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: Ed Reidy

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: Primary teachers will complete observational checklist of student academic, social and developmental progress and will maintain anecdotal records.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The administrative regulation applies equally to all individuals or entities regulated by it.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:001. Definitions for Title 905 Chapter 2.

RELATES TO: KRS 17.165, 199.892 to 199.896, Acts 1992, c. 57, p.412-419

STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p. 412-419.

NECESSITY AND FUNCTION: KRS 199.892 grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to define terms used for child day care facilities.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.

(2) "Caregiver" means child day care staff, including volunteers, who work in a child day care facility.

(3) "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(4) "Day care" means care of a child in a facility which provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Director or provider" means the person responsible for the day-to-day operation of a facility or program for the care of children.

(6) "Facility" means:

(a) A dwelling unit which is the full-time residence of the licensee which regularly provides child day care apart from the parent for seven (7) or more children who are not related to the caregiver.

(b) A location other than a dwelling unit which regularly receives four (4) or more children for child day care who are not related to the caregiver.

(c) The following child day care settings including but not limited to:

1. Day care;

2. Preschool;

3. Nursery;

4. Child care provided by employers for employees;

5. Kindergartens not accredited by the Kentucky Department of Education pursuant to 704 KAR 5:050;

6. Child care in recreational programs;

7. Montessori;

8. Head Start; and

9. Before or after school child care.

(d) The following child care settings shall not be included:

1. Summer camps certified by the Kentucky Department for Health Services as "Youth Camps" and providing care for school-age children;

2. Programs operated under Kentucky Department of Education preschool regulations;

3. Grades one (1) through twelve (12) in private schools;

4. Summer programs operated by religious organizations in which a child attends no longer than two (2) weeks;

5. Child care programs operated by the armed services;

6. Child care provided while parents are on the premises other than the employment and educational site of parents;

7. Child care provided by educational programs which includes parental involvement with the care of the child including development of parenting skills;

8. Facilities operated by a religious organization while religious services are being conducted; and

9. Respite care to provide relief for the primary caregiver of a child for a specific period of time.

(7) "Infant " means a child under one (1) year of age.

(8) "Nighttime care facility" means a facility in which children are received for regular, full, or part-time care during the night. The hours of a facility providing nighttime care shall conform to the hours established by the State Fire Marshal for care given after 6 p.m.

(9) "Premises" means the building and surrounding grounds in which day care is provided and licensed.

(10) "Qualified substitute" means a person who meets the requirements of a caregiver.

(11) "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(12) "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(13) "Secretary" means the Secretary for the Cabinet for Human Resources.

(14) "School-age child" means a child attending kindergarten, elementary or secondary education.

(15) "Tactile activities" means activities of or relating to the sense of touch.

(16) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(17) "Twelve (12) clock hours of annual training" means a Cabinet for Human Resources approved program of child development training that is completed by employees and owners who directly care for children as governed by Acts 1992, c. 57.

(18) "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved program that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by Acts 1992, c. 57

and the remaining six (6) hours shall be completed within the first year.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities. A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
1. First Year: A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
2. Continuing costs or savings: A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the definition of twelve hours of annual training and twelve hours of orientation and child development training required pursuant to SB 211.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of licensed facilities and an increase in the number of certified family child care homes. This reduction may reduce the workload for the Division of Licensing and Regulation.
(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.
(b) Reporting and paperwork requirements: Some revisions in the survey forms may be required to incorporate changes in the licensing standards.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and cabinet staff assessed various options in promulgating this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Senate Bill 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation defines twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally the definition of facility includes a location other than a dwelling unit which regularly receives four or more children for child day care which is in conflict with SB 211 which requires licensing for day care centers providing care for seven or more children.
(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline.Additionally, quality training in these areas is becoming available statewide at no cost to the provider. In reference to the conflict in the number of children in a day care center requiring a license, there is a loophole in the statute for providers in nondwelling units providing care for four to seven unrelated children for which there would be no standards of care. This regulation defines facility as a location other than a dwelling unit which regularly receives four or more children and provides that they be licensed.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896.
(6) Any additional information or comments: The cabinet contacted Senator Johns who drafted SB211 regarding the loophole on the number of children in a nondwelling facility and was informed that this was not the intent of the legislation. Although this situation may not occur, this regulation will provide adequate protection of children by requiring the licensing of this type of facility.There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:011. Repealer of 905 KAR 2:010.

RELATES TO: KRS 199.892 to 199.896, Acts 1992, c. 57, p.412-419
STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p.412-419
NECESSITY AND FUNCTION: 905 KAR 2:010, Standards for all child day care facilities, is no longer required because 905 KAR 2:001, Definitions for Title 905 Chapter 2, 905 KAR 2:090, Child care facility licensure, 905 KAR 2:110, Child care provider requirements, 905 KAR 2:120, Child care facility health and safety standards, and 905 KAR 2:130, Child care discipline contain the substance and content of 905 KAR 2:010.

Section 1. 905 KAR 2:010, Standards for all child day care facilities, is hereby repealed.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

1. First Year: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

2. Continuing costs or savings: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

1. First Year: There will not be any first year direct or indirect cost or savings to the Department for Social services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: There will not any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and Cabinet staff assessed various options and the proposed regulations were promulgated.

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

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:090. Child care facility licensure.

RELATES TO: KRS 17.165, 199.892 to 199.896, Acts 1992, c. 57, p.412-419

STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p.412-419.

NECESSITY AND FUNCTION: KRS 199.892 grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Inspections. Representatives of the cabinet shall at all times have the authority to make unannounced inspections of facilities:

(1) Premises;

(2) Records required by 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 through 905 KAR 2:130; and

(3) Programs.

Section 2. License Issuance. (1) A license shall be issued for:

(a) A specified physical location;

(b) Operation by a designated sponsor or owner;

(c) Age categories; and

(d) A specified maximum number of children to be on premises at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:

1. Available space as determined by the State Fire Marshall's office in conjunction with the cabinet;

2. Aequacy of program;

3. Equipment; and

4. Staff.

(2) The license shall list the services provided by the facility. (3) To qualify for a license, a child day care facility shall:

(a) Comply with local zoning requirements;

(b) Be approved by the office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial

enrollment of children;

(e) Have liability insurance in the amount of $100,000 per child per occurrence; and

(f) Comply with provisions of this administrative regulation and 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(4) The facility shall be in compliance with subparagraph (3) of this section or shall have submitted an acceptable plan of correction. Compliance shall be ascertained through on-site inspections of the facility. Regulatory violations identified during these 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. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan. If the plan is unacceptable, the reasons shall be specified. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days.

(5) License shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.

(6) License shall not be transferable. A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.

(7) The license shall be posted in a conspicuous place.

(8) A facility shall not begin operation without a license to operate from the Cabinet for Human Resources.

(9) A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Eighty (80) dollars for initial licensure for a facility caring for thirteen (13) or more children;

(b) Forty (40) dollars for initial licensure of a facility caring for less than thirteen (13) children; or

(c) Forty (40) dollars for renewal licensure.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the licensure application. Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Human Resources or the State Fire Marshall's office.

Section 4. Licenses Shall be Renewed Annually. (1) A renewal application and fee shall be submitted prior to the expiration date of the current license.

(2) The facility shall comply with the requirements of Section 2(3)(c)-(f) and (4) of this administrative regulation.

Section 5. Basis for Revocation or Denial. (1) The Secretary of the Cabinet for Human Resources may deny or revoke a license for failure to meet the standards of this administrative regulation.

(2) If a license is revoked, the applicant or licensee shall not reapply for at least one (1) year from the designated date of closure established by the cabinet hearing officer.

Section 6. Right of Appeal. (1) If a license has been denied or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.

(2) Upon receipt of the request for a hearing, the secretary or his representative shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing. The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed. The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(3) 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. If license denial or revocation is upheld, the secretary shall specify the date by which the facility shall close and the licensee shall be notified in writing.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: Direct costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff, specified requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification rather than licensure.

1. First Year: First year costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff, specified requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification rather than licensure.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff and school-age care requirements. The cabinet will complete a survey of actual day care rates in October, 1993 which will allow providers three months to determine the increased costs from the revisions in the staff child ratios. These increased costs may be offset by a revision in the cabinet's maximum child day care payments effective April, 1994.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the cost for facilities that are the full-time residence of the licensee for criminal records checks and tuberculosis skin tests for adults living in the home.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements include criminal records check and tuberculosis skin test for all adults living in the home of a facility that is the full-time residence of the licensee. Other paperwork requirements include providing for public inspection copies of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three years, each court order pertaining to the quality of care or service provided and a copy of children and parent rights pursuant to SB 211.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of

licensed facilities and an increase in the number of certified family child care homes. This reduction in licensed facilities may reduce the workload for the Division of Licensing and Regulation.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

3. Additional factors increasing or decreasing costs: The revision in the staff child ratio effective July, 1993 may increase the costs of day care as provided by the cabinet but will be offset by an increase in the quality of care provided for infants and toddlers. There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: Some revisions in the survey forms will be required to incorporate changes in the licensing standards regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals and cabinet staff assessed various options in promulgating this regulation. Many suggestions regarding the staff child ratios were received from child care advocates, providers, and cabinet staff. The decision was reached to revise the infant and toddler ratio effective July, 1993.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Senate Bill 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation requires twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally this regulation requires a location other than a dwelling unit which regularly receives four or more children unrelated to the provider to be licensed.

(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. A location other than a dwelling unit could have received four to six children unrelated to the provider and not been required to comply with any health and safety standards as established for certified or licensed providers. The cabinet through this regulation requires these locations to be licensed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896. The cabinet attempted to harmonize this regulation, but determined that it was not the intent of the legislature to allow nondwelling unit locations to care for four to six children unrelated to the provider without being meeting health and safety standards.

(6) Any additional information or comments: The cabinet contacted Senator Johns to determine the intent of SB 211 and verify the need to license nondwelling unit locations that care for four to six children unrelated to the provider. The cabinet will complete a survey of actual day care rates in October, 1993 which will allow providers three months to determine the increased costs from the revisions in the staff child ratios. These increased costs may be offset by a revision in the cabinet's maximum child day care payments effective April, 1994. There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:110. Child care facility provider requirements.

RELATES TO: KRS 17.165, 199.892 to 199.896, Acts 1992, c. 57, p.412-419

STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p.412-419

NECESSITY AND FUNCTION: KRS 199.892 grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the facility in accordance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(2) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall be available for their use.

(3) Information concerning children, their parents, relatives, or guardians shall be kept in strict confidence by the staff, except as otherwise required by law.

(4) Volunteers shall comply with the policies and procedures of the facility.

(5) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other procedures pertaining to the operation of the facility.

(6) Activities of persons living in a facility that is the dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by persons in the facility.

(a) Caregivers shall wash hands with soap and warm running water after diapering or toileting each child.

(b) Caregivers shall wash hands with soap and running water immediately before feeding children.

(8) The services to be provided within the facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to parents.

(9) Parents or persons exercising custodial control of a child shall be permitted to visit the facility at any time during regular hours of operation.

(10) The director or provider shall be responsible for the following:

(a) Development of a child care program which meets the requirements of this administrative regulation and 905 KAR 2:090, 905 KAR 2:120 and 905 KAR 2:130;

(b) Development of facility plans, policies and procedures;

(c) Supervision of personnel and their conduct, carrying out of personnel policies, scheduling daily activities, and management of staff meetings;

(d) Evaluation of the instructional activities of staff;

(e) Assurance that additional staff is available during cooking or cleaning hours if necessary to maintain regulated supervision of the children; and

(f) Provision for health, safety and comfort of children.

Section 2. Records. (1) The following records shall be maintained at the facility:

(a) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician;

(b) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the facility director at enrollment;

(c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized in accordance with 902 KAR 2:060 shall be on file within thirty (30) days of admission;

(d) Permission forms for trips off the premises signed by the parent or guardian;

(e) Daily attendance records of children;

(f) For each employee, a copy of the results of a negative tuberculin skin test or chest X-ray prior to employment and every two (2) years thereafter;

(g) A written schedule of staff working hours;

(h) A written record of staff training;

(i) A written plan for staff development;

(j) A written record of quarterly fire, earthquake and tornado drills;

(k) A written plan or diagram outlining the course of action in the event of natural or man-made disaster posted in a prominent place;

(l) Each facility shall obtain a criminal records check directly from the Justice Cabinet prior to initial employment of staff with supervisory or disciplinary authority over a minor, including cooks, bus drivers, substitutes and volunteers. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, he shall not be considered a volunteer for the purpose of criminal records check;

(m) A written record of reports to the cabinet required in Section 4(1) of this administrative regulation; and

(n) The facility shall post the following for public inspection in the director's office or lobby:

1. A copy of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three (3) years, including the most recent;

2. A description of the services currently provided by the facility;

3. A listing of the rates currently charged for services provided by the facility;

4. A listing together with the charges for the services and items not included in the basic rate for which parents may be charged separately;

5. A copy of each court order pertaining to the quality of care or services provided in the facility; and

6. A copy of children and parent rights pursuant to Acts 1992, c. 57.

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 3. Staff Requirements. (1) A director of a facility providing child care shall:

(a) Be 21 years of age;

(b) Have a high school diploma or a General Equivalency Diploma (GED);

(c) Not be employed elsewhere during the operating hours of the facility between 6 a.m. to 6 p.m.; and

(d) Meet one (1) of the following requirements:

1. Master's degree in Early Childhood Education and Development;

2. Bachelor's degree in Early Childhood Education and Development;

3. Master's degree or a Bachelor's degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training;

4. Associate degree in Early Childhood Education and Development;

5. Associate degree in a field other than Early Childhood Education and Development, plus two (2) years of verifiable full-time paid experience working in a licensed day care facility, plus twelve (12) clock hours of child development training;

6. Child Development Associate (CDA);

7. Certificate or diploma in Child Care Services from a Vocational School (Dictionary of occupational title: teacher, pre-school; director, preschool), plus two (2) years of verifiable full-time paid experience working in a licensed day care facility, plus twelve (12) clock hours of orientation and child development training; or

8. Five (5) years of verifiable full-time paid experience working in a licensed day care facility, plus twelve (12) clock hours of orientation and child development training.

(2) A director of a licensed facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under Section 3(1) of this administrative regulation.

(3) The following staff requirements shall apply to a facility:

(a) A facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child;

(b) A staff person shall be on duty who is annually certified in cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet. This training shall be in addition to the twelve (12) clock hours requirement in subsections (1) and (2) of this section if the staff person is the director;

(c) One (1) adult shall be designated as being in charge. If the director is not present in the facility, the adult left in charge shall carry out the duties of the director;

(d) A minimum of two (2) qualified substitutes shall be available in case of need;

(e) The minimum of adult workers in a facility shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are under direct supervision. A person under the age of sixteen (16) shall not be counted as staff for the staff to child ratio;

(f) Controlled substance or alcohol use shall not be permitted on the premises during hours of operation;

(g) Smoking shall be permitted only in designated areas away from the children;

(h) Staff members shall remain awake while on duty; and

(i) Require for a facility that is the full-time residence of the licensee that adults living in the home submit:

1. Criminal records check; and

2. Tuberculosis skin test.

(4) Twelve (12) clock hours of orientation and child development training during the first year and twelve (12) clock hours of annual training thereafter shall be required and shall be documented in writing by the trainer.

Section 4. Reports Made to the Cabinet for Human Resources. (1) The following shall be reported within twenty-four (24) hours:

(a) Communicable disease to the local health department in accordance with KRS 214.010;

(b) An accident or injury requiring extensive medical care, hospitalization, or death;

(c) An incident that results in legal action by or against the facility which affects a child or personnel; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse, neglect or dependency shall be reported as specified in KRS Chapter 620.

(3) A change of director shall be reported within one (1) week.

(4) Notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership or sponsorship;
(b) Change of location;
(c) Increase in capacity;
(d) Hours of operation; and
(e) Change of services in the following categories:
1. Infant;
2. Toddler;
3. Two (2) years to school-age;
4. School-age;
5. Nighttime care; and
6. Transportation.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: Direct costs to the affected entities may be incurred from additional training requirements for owners and staff and specified requirements for the director of a facility.

1. First Year: First year costs to the affected entities may be incurred from the additional training requirements for owners and staff, specified requirements for the director of a facility.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred from the additional training requirements for owners and staff.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the cost for facilities that are the full-time residence of the licensee for criminal records checks and tuberculosis skin tests for adults living in the home.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements include criminal records check and tuberculosis skin test for all adults living in the home of a facility that is the full-time residence of the licensee. Other paperwork requirements include providing for public inspection copies of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three years, each court order pertaining to the quality of care or service provided and a copy of children and parent rights pursuant to SB 211.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of licensed facilities and an increase in the number of certified family child care homes. This reduction in licensed facilities may reduce the workload for the Division of Licensing and Regulation.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: Some revisions in the survey forms will be required to incorporate changes in the licensing standards regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals and cabinet staff assessed various options in promulgating this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: SB 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation requires twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally this regulation requires a location other than a dwelling unit which regularly receives four or more children unrelated to the provider to be licensed.

(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. A location other than a dwelling unit could have received four to six children unrelated to the provider and not been required to comply with any health and safety standards as established for certified or licensed providers. The cabinet through this regulation required these locations to be licensed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896. The cabinet attempted to harmonize this regulation, but determined that it was not the intent of the legislature to allow nondwelling unit locations to care for four to six children unrelated to the provider without being meeting health and safety standards.

(6) Any additional information or comments: The cabinet contacted Senator Johns to determine the intent of SB 211 and verify the need to license nondwelling unit locations that care for four to six children unrelated to the provider. There are no additional information or comments of which were are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:120. Child care facility health and safety standards.

RELATES TO: KRS 17.165, 199.892 to 199.896, Acts 1992, c. 57, p.412-419

STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p.412-419

NECESSITY AND FUNCTION: KRS 199.892 grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-child ratios and group size for an operating facility shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size
Birth - 1 year	1 staff for 6 children	12
	(1 staff for 5 children	10)*
1 to 2 years	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20
3 to 4 years	1 staff for 12 children	20
4 to 5 years	1 staff for 14 children	24
5 to 7 years	1 staff for 15 children	25
7 and older	1 staff for 25 children	25
	(for before and after school)	
	1 staff for 20 children	20
	(for full day of care)	

* This provision shall become effective July 1, 1993

(a) A group shall be separately maintained in a defined area unique to the group with specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the staff-child ratio and maximum group size. One (1) adult alone shall not provide care for more than ten (10) preschool children, or for more than fifteen (15) school age children.

(2) Each facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while the children are under the supervision of employees of the facility. The program shall include procedures to inform facility employees of the laws of the Commonwealth pertaining to child abuse or neglect as specified under KRS Chapter 620.

(3) The facility shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:

(a) A variety of creative activities which may include the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building; and
7. Tactile activities.

(b) Indoor or outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play apart from the group at times, if the child desires.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children stand or sit.

(j) Television viewing by children shall be limited to program related areas.

(4) If school-age care is provided:

(a) A separate area or room shall be provided in a facility.

(b) A child shall be provided a snack after school.

(c) Separate toilet facilities shall be provided for males and females, or a plan implemented to use the same facilities at separate times.

(5) If nighttime care is provided:

(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day. If school-age children are served, time spent in school shall be included in the sixteen (16) hours limit.

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room.

(c) If children are present for extended periods of time during their waking hours, the facility shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns.

(e) School children shall be offered breakfast if they go to school from the facility.

Section 2. Health needs of the child shall be met as follows:

(1) First aid supplies shall be available to provide prompt and proper first aid treatment and stored out of reach of children. Supplies shall be periodically inventoried to ensure that they are current. Reusable items shall be sanitized and maintained in a sanitary manner. First aid supplies shall include:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Tweezers;
(g) Thermometers;
(h) Flashlight;
(i) Cold pack;
(j) First aid book;
(k) Disposable latex gloves; and
(l) Ipecac syrup (to be given under direction of a licensed physician or the poison control center).

(2) A child showing signs of an illness that may be communicable to others in a day care setting shall not be admitted to the regular child care program. If a child becomes ill during the day, he shall be placed in a supervised area isolated from the rest of the children, the parent or designated person shall be contacted immediately and arrangements shall be made to remove the child from the facility.

(3) Prescription medications shall not be given to a child except as authorized by a licensed physician and with written daily request of the parent or guardian.

(a) The facility shall keep a written record of the administration of each medication, including time, date, amount and staff giving the medication.

(b) Medication shall be stored in a separate (locked) place out of the reach of children and shall be in the original bottle and properly labeled.

(c) Medication shall not be given to a child if the expiration date on the bottle has passed.

(4) Nonprescription medication shall be given to a child only with written daily request of parent or guardian.

(5) Each child shall be helped with personal care and cleanliness.

(6) Children shall not return from the toilet to activities without first washing hands. A child shall wash his hands with soap and warm, running water prior to eating and after toileting.

(7) Diapering and toilet training shall be a relaxed, pleasant

activity. Toilet training shall be coordinated with parent or guardian.

(8) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available.

(9) Soiled diapers or wet clothing shall be changed promptly and stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(10) When a child is diapered, the child shall be placed on a clean washable surface or disposable covering. Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician. If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered. After diapering, staff shall wash their hands and disinfect the surface before diapering another child.

(11) If training chairs are used, they shall be emptied promptly and sanitized after each use.

(12) The infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that participates in the child care food program, or provides formula as a fringe benefit to the parent.

(13) Bottles shall be individually labeled and promptly refrigerated.

(14) Children shall not be placed in bed with a bottle.

(15) A child shall have rest periods not to exceed two (2) hours except for infants and toddlers, and time periods during nighttime care and extended hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period.

(16) Drinking water shall be freely available to a child and an individual drinking cup provided if no fountain is provided.

(17) Toilet articles like combs, brushes and toothbrushes used by a child shall be individual and plainly marked.

(18) The facility shall provide and serve nutritious snacks and meals.

(a) A child present at meal or snack times shall be served.

(b) The facility shall provide and serve breakfast or a midmorning snack, lunch, and a midafternoon snack and dinner, if appropriate.

(c) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between meals or snacks.

(d) Food prepared shall be in quantities reflecting the developmental stage of the child.

(e) Food requirements include but shall not be limited to the following:

1. Breakfast shall include milk, bread, and fruit or vegetable or juice;

2. Snacks shall include two (2) of the following: milk, protein, fruit or vegetable or juice, or bread; and

3. Lunch and dinner shall include milk, protein, two (2) vegetables or a fruit and one (1) vegetable, and bread.

(f) If parents choose to provide food for their own child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed, the facility shall provide additional food necessary to meet these requirements.

(g) A child shall be seated at eating time with sufficient room to manage food and tableware. Adults shall be present with children during eating times.

(h) Individual eating utensils shall be of size and design that a child can handle easily.

(i) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. If the facility does not have a current food service permit issued under the authority of the Department for Health Services, as governed by 902 KAR 45:005, Food Service Code, it shall be in compliance with the requirements of this section.

(1) A facility that serves a meal shall have a three (3) compartment sink or other equipment, and procedures approved by the cabinet, for the purpose of washing and sanitizing dishes, silverware, eating and cooking utensils after use.

(2) Food supplies and protection are to be maintained as follows:

(a) Food shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. Hermetically sealed, nonacidic and low-acidic food which has been processed in a place other than a commercial food-processing establishment shall not be used. Food served shall be from a source which is in compliance with applicable state and local laws and administrative regulations. Established commercial food stores are an acceptable source.

(b) Food, while being stored, prepared, displayed or served shall be protected against contamination from dust, flies, rodents and other vermin, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage.

(c) Potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation. The temperature for potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service.

(d) Frozen food shall be kept at a temperature of zero degrees Fahrenheit or below so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, quick thawed as part of the cooking process, or by another method satisfactory to the health authority.

(e) Each cold-storage facility used for storage of perishable food in a nonfrozen state shall have an indicating thermometer or other appropriate temperature measuring device.

(f) Convenient and suitable sanitized utensils shall be provided and used to minimize handling of food where food is prepared.

(g) Poultry, pork and their products which have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

(h) Meat salads, poultry salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

(i) Food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent containers may be stored on the floor if it is maintained in an acceptable sanitary condition.

(j) Individual portions of food served to a child shall not be served again. Wrapped food, which is still wholesome and has not been unwrapped, may be reserved.

(k) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(3) Health and disease controls shall be in place as follows: (a) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.

(b) An employee shall maintain personal cleanliness and conform to hygienic practices while on duty. Hands shall be washed thoroughly before starting work, and as often as may be necessary to remove soil and contamination. An employee shall not resume work after visiting the toilet room without first washing his hands.

(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.

(d) Food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, be accessible for cleaning, and nontoxic.

(e) Eating and drinking utensils shall be cleaned for each usage. Kitchenware, food contact surfaces of equipment, exclusive of

cooking surfaces of equipment, and food storage utensils used in preparation or serving of food or drink shall be cleaned after each use. Cooking surfaces of equipment shall be kept clean. Nonfood contact surfaces of equipment shall be cleaned to keep them in a clean and sanitary condition. Single-service articles shall be stored, handled, and dispensed in a sanitary manner, and be used only once.

(f) Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

(g) Openings to the outer air shall be effectively protected against the entrance of the insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(h) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.

(i) Kitchens shall be adequately ventilated to the outside air.

(j) The water supply shall be properly located, protected, adequate, and of a source approved by the local health department. Groundwater supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

(k) Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws as governed by KRS 211.350 to 211.380. Sewage shall be disposed of by a method approved by the Cabinet for Natural Resources and Environmental Protection or the Cabinet for Human Resources. Consultation shall be sought from the Cabinet for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction over a facility in which the adequacy of the plumbing is questioned.

(l) Each facility shall be provided with adequate and conveniently located toilet and handwashing accommodations.

1. Each toilet shall be kept in clean condition, kept in good repair, be lighted and have ventilation to outside air.

2. A supply of toilet paper shall be available.

3. Lavatories shall have hot and cold running water under pressure which allows washing of hands under warm water.

4. Water temperature at lavatories used for hand washing shall not exceed 110 degrees Fahrenheit.

5. Soap and approved individual cloth or paper towels shall be provided.

6. Easily cleanable, covered waste receptacles shall be available in toilet and handwashing areas.

Section 4. Transportation. (1) There shall be documentation available to indicate conformance to federal and state laws pertaining to vehicles, drivers and insurance as governed by KRS 281.600, 138.655 and 186.020.

(2) A facility providing or arranging transportation service shall have a written plan and statement of transportation policies and procedures.

(3) Transportation provided by licensed public transportation or school bus shall meet Transportation Cabinet safety inspection requirements.

(4) Requirements for facility owned vehicles and their usage:

(a) Twelve (12) or more passenger vans and buses shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle used to transport children, and requiring traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying colors and words.

(c) A car or van shall be equipped with seat belts for each child to be individually secured.

(d) A vehicle used to transport children shall not carry hazardous materials aboard.

(5) The staff-child ratios set forth in Section 6(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of six (6) a driver shall supervise alone is four (4).

(6) Each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat.

(7) A vehicle containing children shall not be left unattended.

(8) A child shall not be left unattended at the site of after-care delivery.

(a) If the parent, or a person designated by the parent to accept the child, is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.

(b) If a person other than the designated person is to receive the child, arrangements shall be made by the parent or guardian and documented.

(c) A child shall not be picked up at or delivered to a location which requires crossing the street or highway unless accompanied by an adult.

(9) A vehicle transporting children shall have the headlamps on.

(10) A vehicle shall be refueled when not being used to transport children. If emergency refueling or repair is necessary during transporting, children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(11) The engine shall be turned off, keys removed, and brake set if the driver is not in the driver's seat.

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.

(a) There shall be a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, hallways, and storage areas. It shall be kept clean and in good repair.

(b) If a portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted; that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boys' bathrooms urinals may be substituted for up to one-half (1/2) of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food. The kitchen shall not be used for activities of the children.

(f) The facility shall be equipped with a telephone accessible to the rooms used by the children.

(g) If the only food served by the facility is an afternoon snack for the school-age children, a kitchen shall not be required if adequate refrigeration is available.

(h) Indoor areas for infants and toddlers shall be provided separated from areas used by older children. The infants and toddlers may participate in activities with older children for short periods of time.

(i) There shall be adequate crawling space for infants and toddlers protected from older children and away from general traffic patterns of the facility.

(j) A facility shall have lavatories in or immediately adjacent to changing areas used for infants and toddlers.

(k) If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded and out of the traffic pattern of older children.

(l) The Department of Housing, Buildings and Construction and the State Fire Marshal's office shall be contacted concerning planned new buildings, additions, or major renovations prior to construction.

(2) Grounds shall be provided as follows:

(a) On-site outdoor play areas shall be fenced for the safety of the children. A waiver to the fencing standards may be granted to those schools operating a before-and-after school program. Outdoor play areas shall be a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section. The area shall be free from litter, glass, rubbish, and flammable materials. The outdoor area shall be safe and drained; or

(b) If a facility does not have access to an outdoor play area, an indoor space shall be used as a play area and have a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(3) Equipment needed within the facility shall be as follows:

(a) Equipment and furnishings shall be clean and in good repair. There shall be safe play equipment, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 1 of this administrative regulation. Toys shall be too large to swallow, durable, and without sharp points or edges.

(c) Tables and chairs shall be of suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for each child's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3-1/2) hours per day. Cribs shall have a firm, comfortable waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. If mats are used, floors shall be free from drafts and dampness. Cots and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be used.

(h) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

(i) Chairs shall be provided for staff to use when feeding, holding or playing with children.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: Direct costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff, specified requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification rather than licensure.

1. First Year: First year costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff, specified requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification rather than licensure.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff child ratios for infants effective July, 1993, additional training requirements for owners and staff and school-age care requirements. The cabinet will complete a survey of actual day care rates in October, 1993 which will allow providers three months to determine the increased costs from the revisions in the staff child ratios. These increased costs may be offset by a revision in the cabinet's maximum child day care payments effective April, 1994.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the cost for facilities that are the full-time residence of the licensee for criminal records checks and tuberculosis skin tests for adults living in the home.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements include criminal records check and tuberculosis skin test for all adults living in the home of a facility that is the full-time residence of the licensee. Other paperwork requirements include providing for public inspection copies of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three years, each court order pertaining to the quality of care or service provided and a copy of children and parent rights pursuant to SB 211.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of licensed facilities and an increase in the number of certified family child care homes. This reduction in licensed facilities may reduce the workload for the Division of Licensing and Regulation.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

3. Additional factors increasing or decreasing costs: The revision in the staff child ratio effective July, 1993 may increase the costs of day care as provided by the cabinet but will be offset by an increase in the quality of care provided for infants and toddlers. There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: Some revisions in the survey forms will be required to incorporate changes in the licensing standards regulations.

(3) Assessment of anticipated effect on state and local revenues: The revision in the staff child ratio effective July, 1993 may increase the costs of day care as provided by the cabinet but will be offset by an increase in the quality of care provided for infants and toddlers. There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals and cabinet staff assessed various options in promulgating this regulation. Many suggestions regarding the staff child ratios were received from child care advocates, providers, and cabinet staff. The decision was reached to revise the infant and toddler ratio effective July, 1993.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: SB 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation requires twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally this regulation requires a location other than a dwelling unit which regularly receives four or more children unrelated to the provider to be licensed.

(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. A location other than a dwelling unit could have received four to six children unrelated to the provider and not been required to comply with any health and safety standards as established for certified or licensed providers. The cabinet through this regulation requires these locations to be licensed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896. The cabinet attempted to harmonize this regulation, but determined that it was not the intent of the legislature to allow nondwelling unit locations to care for four to six children unrelated to the provider without being meeting health and safety standards.

(6) Any additional information or comments: The cabinet contacted Senator Johns to determine the intent of SB 211 and verify the need to license nondwelling unit locations that care for four to six children unrelated to the provider. The cabinet will complete a survey of actual day care rates in October, 1993 which will allow providers three months to determine the increased costs from the revisions in the staff child ratios. These increased costs may be offset by a revision in the cabinet's maximum child day care payments effective April, 1994. There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:130. Child care discipline.

RELATES TO: KRS 199.892 to 199.896, 45 CFR Part 98, Acts 1992, c. 57, p.412-419

STATUTORY AUTHORITY: KRS 194.050, 199.892, Acts 1992, c. 57, p.413

NECESSITY AND FUNCTION: KRS 199.892 grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to set discipline standards for child day care facilities.

Section 1. Discipline in Child Day Care Facilities. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall:

(1) Establish simple and consistent rules both for children and staff that set the limits of behavior;

(2) Not subject children to harsh or physical discipline;

(3) Not allow loud, profane, threatening, frightening or abusive language by staff or other persons on the premises; and

(4) Not associate discipline with rest, toileting, or food.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1993, at 9 a.m. in the Health Services Auditorium, 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 January 17, 1993: 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 between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

1. First Year: There are no direct or indirect first year costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

2. Continuing costs or savings: There are no continuing direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations. The proposed regulations will improve the language of the regulation but does not effect the department's requirements for discipline.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

1. First Year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect

competition for the DSS.

(b) Reporting and paperwork requirements: There will not any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and cabinet staff assessed various options and this regulation was the final recommendation.

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

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: This regulation was promulgated to comply with SB 211 and the Child Day Care Bill of Rights which states children have the right to be free from physical or mental abuse and the right not to be subjected to abusive language or abusive punishment. There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 1 and 2, 1992 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 1, 1992 at 2 p.m. and Wednesday, December 2, 1992 at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the November 4 and 5, 1992 meeting were approved.

Present were:

Members: December 1, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Pat McCuiston; Representatives Woody Allen, Jim Bruce and James Yates. December 2, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Ginny Wilson, Capital Planning Advisory Board; George Russell, Anita Taylor, Registry of Election Finance; Billy F. Hunt, James Baker, Kentucky Teachers' Retirement System; Sandra Godbey, Board of Claims; Dave Nicholas, Division of Occupations & Professions; Conley C. Congleton, Board of Chiropractic Examiners; Lucy B. Richardson, Justice Cabinet; Sandra G. Pullen, Transportation Cabinet; Jack Damron, Department of Corrections; Akeel H. Zaheer, Dianne Worthy, Florence S. Huffman, Department of Education; Keith Stewart, W. Michael Baker, Northern Kentucky University; James Gary Lee, Valerie Salven, L. T. Grant, Department of Workers' Claims; David Ashley, Rick Jones, Department of Financial Institutions; Mike Fulkerson, Bernard J. Hettel, Kentucky Racing Commission; Judith G. Walden, Department of Housing, Buildings and Construction; Janice Kline, Mark Cornett, Cookie Whitehouse, Pat Bishop, Michael Cheek, Carey Durrett, Barbara Coleman, Cabinet for Human Resources; Joe Valvona, Jan Blake Pearson, Alliant Health System; Mack Decker, Jewish Hospital; Jerry Alleyne, Kentucky Education Association; Bill Young, Kentucky Manufactured Housing; Bill Doll, Jackson & Kelly; Don Chasteen, John Cooper, Kentucky Medical Association; David Thomason, Attorney for Ellis Park; Randy Napier, Frazier Rehab Center; Lola Davis, Jewish Hospital Healthcare Services; Sarah S. Nicholson, Nancy Galvagni, Kentucky Hospital Association; Vince Guenthner, Louisville Water Company.

LRC Staff: Greg Karambellas, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman, and Don Hines.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Legislative Research Commission: Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures. Section 4 of this administrative regulation was amended to comply with KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:020. General provisions. This administrative regulation was amended as follows: (1) Section 4, the word "written" was added before "complaint" to state that enforcement actions may be initiated by a written complaint; and (2) language was amended to conform to the drafting and format requirements of KRS 13A.220(4) relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

32 KAR 2:030. Complaints; internally-generated matters. This administrative regulation was amended as follows: (1) language was amended to conform to the format requirements of KRS 13A.220(4), and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive; (2) Section 1(2) was amended to comply with KRS 13A.120(2)(e) prohibiting repeating or summarizing a statute by deleting language specifying when a complaint alleging a violation shall be filed, and inserting language which requires a complaint filing "within the time prescribed by KRS 500.050"; (3) Section 5(3) authorized the registry to "publish" the name and report of persons failing to file "disclosure reports" in a timely fashion. This language was deleted. Section 5(3) was amended to read as follows: "No later than four (4) days preceding each primary and general election, the Registry shall publish the names of all candidates appearing on the ballot who have failed to timely file any report required by KRS 121.180(3)(a) for any reporting period since the date of the last election"; (4) Section 8 was deleted in its entirety pursuant to KRS 13A.222(4)(a).

Representative Bruce asked why the four day requirement has been established since candidates do not file their required reports that quickly. Agency personnel responded that a candidate would have filed his twelve day pre-election report, which is the last report due. The Registry determined that four days was a reasonable time for it to pull delinquencies and notify individuals of failure to file timely.

Representative Bruce asked what effect this would have if a candidate ran unopposed. Agency personnel responded that Senate Bill 221 removed the distinctions between opposed and unopposed candidates; therefore, the only instance in which a candidate would not be required to file a report would be if the candidate filed a statutory "exemption", such as the $3,000 exemption.

Chairman Kerr asked for a clarification of whether KRS 121.180(3)(a) authorizing the Registry to "publish" the names of persons failing to timely file "campaign financial reports" also includes authorization to publish the names of persons who fail to file "disclosure reports", required by KRS 61.750. Agency personnel responded that failure to file "disclosure reports" required by KRS 61.750 would permit the Registry to institute an action to void a candidacy. The question of publishing a candidate's name for failure to file a required disclosure report is irrelevant since his name would not be on the ballot.

Chairman Kerr stated that KRS Chapter 121 refers simply to publication of "financial reports". Whether this includes publication of disclosure reports is unclear because KRS Chapter 61 relates only to disclosure reports. It does not include specific statutory authorization for the Registry to publish names of individuals who fail to file disclosure reports required under KRS Chapter 121.

The subcommittee approved a motion to request LRC to refer this issue to the appropriate legislative committee for possible amendment of relevant statutes in the next session of the General Assembly.

32 KAR 2:040. Preconciliation procedures. Sections 1(1), 2(2), 5(2) and (3), 6(1), 7(1), 8(1) and (2), and 10(2) of this administrative regulation were amended to conform to the drafting and format requirements of KRS 13A.220(4) relating to format and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

32 KAR 2:050. Conciliation. NECESSITY AND FUNCTION and Section 2 of this administrative regulation were amended to conform to the drafting and format requirements of KRS 13A.220(4) relating to format and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

32 KAR 2:060. Advisory opinions. This administrative regulation was amended as follows: Section 1(1), to comply with the drafting requirements of KRS 13A.222(4)(j), which provides that the singular includes the plural. Section 4(1) through (3) were deleted in their entirety pursuant to KRS 13A.120(2)(e) which prohibits repeating or summarizing a statute. In lieu thereof, a cross-reference to the applicable statute was made.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

The following two administrative regulations were amended to conform to drafting requirements of KRS 13A.220(4), relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

Senator Huff asked if there were additional monies allocated this year for this program. Cabinet personnel responded that there were no additional federal monies this year and that federal support had been reduced approximately eight percent from 1991.

904 KAR 2:016. Standards for need and amount; AFDC.

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

Food Stamp Program

904 KAR 3:050. Additional provisions. This administrative regulation was amended to conform to drafting requirements of KRS 13A.220(4), relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

Department for Social Services: Child Welfare

905 KAR 1:350. Family preparation section. This administrative regulation was amended to conform to drafting requirements of KRS 13A.220(4), relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive, and KRS 13A.222(4)(c), prohibiting "such" and other expressions or words.

The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:

Kentucky Licensing Board for Specialists in Hearing Instruments

201 KAR 7:015. Fees.

201 KAR 7:075. Continuing education requirements.

Board of Examiners of Social Work

201 KAR 23:020. Examination; fee.

Board of Respiratory Care

201 KAR 29:015. Fees.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:120. Blackburn Correctional Complex.

Department of Financial Institutions: Administration

808 KAR 1:130. Loan production offices. An objection had been raised to this administrative regulation on the ground that it violated the restrictions established in KRS 287.820(1)(a) and (4). KRS 287.820 provides that employees of a loan production office (LPO) may solicit or originate loans for final approval and disbursement by the principal bank office. Section 1 permits an LPO officer to accept and approve a loan application, without requiring approval by the principal office. Section 2 permits the establishment of a transaction account at the principal office which may be drawn on by the LPO officer in order to distribute loan proceeds. Section 3 permits the closing of loans at the LPO at which they were originated. Section 4 allows LPO employees to provide a customer information on any lending account, whether or not the loan was originated at the LPO.

Agency personnel stated that this administrative regulation was necessary; that it followed current practices that had developed in response to electronic banking; and did not violate the intent of KRS Chapter 287. Representative Bruce stated that he had sponsored the legislation relating to LPOs, and agreed with agency personnel.

In response to a question raised by Chairman Kerr, Subcommittee staff stated that the transaction account procedure established by Section 2 appeared to comply with KRS Chapter 287 because the initial disbursement is made by the principal office into a transaction account at the principal office. Subcommittee staff stated that Section 4, relating to information that may be conveyed to a bank customer at an LPO, also did not appear to violate KRS Chapter 287. However, KRS 287.820(1)(a) clearly required final approval and closure of a loan at the principal office.

The Subcommittee approved a motion to request LRC to refer the issues raised to the appropriate interim joint committee and to request that it consider legislation amending KRS 287.820.

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.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the December meeting upon agreement by the promulgating agency and the Subcommittee:

Finance and Administration Cabinet: Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel.

Labor Cabinet: Workers' Compensation Board

803 KAR 25:091. Workers' compensation hospital fee schedule. Although the ARRS and Board agreed to defer this administrative regulation until the January 1993 ARRS meeting, Chairman Kerr invited testimony and discussion on the administrative regulation.

Alliant Health System representatives stated that Alliant functions primarily as a physician's office, even though it is located in a hospital. They proposed an amendment that would allow Alliant to bill under the Worker's Compensation Medical (Physicians) Fee Schedule [803 KAR 25:090], rather than the Hospital Fee Schedule and corresponding cost-to-charge methodology that hospitals are required to follow. They stated that under the proposed amendment, hospital-based clinics that provide only workers' compensation or occupational medicine services will be allowed to use the Medical Fee Schedule and not be subject to the Hospital Fee Schedule.

Alliant representatives stated that comments were raised at the Board's October 21st, 1992 public hearing concerning Section 4, and that the Board failed to respond in its statement of consideration, as required by KRS 13A.280.

Chairman Kerr stated that he understood Judge Grant with the Workers' Compensation Board is aware of the proposed amendment and plans to meet with Alliant representatives to consider the amendment.

A representative of Jewish Hospital Health Care Services stated that Section 3(3), establishing a hospital's adjusted cost-to-charge ratio, failed to recognize teaching facilities, and the medical expenses associated with them, either in terms of the add-on percentage or the cap on the cost-to-charge ratio. She stated that Medicare recognizes an additional reimbursement for teaching facilities, and that this issue would effect four teaching facilities in Kentucky. She also stated that Section 3(3) does not consider the "intensity of service" or the "case mix index", although they are recognized by Medicare. This relates to hospitals that treat patients with health problems requiring a higher intensity of service.

A representative with Rehab Services in Louisville stated that Rehab Services has five comprehensive rehab facilities in the Louisville region that provide rehabilitation services to workers injured on the job. He objected to the failure of this administrative regulation to address services other than hospital- based services. He added that Rehab Services would like to have its facilities considered,

because each of them are licensed as a separate entity, and have reimbursement calculated on the basis of each facility rather than as a single unit.

The Board stated that its staff will work with representatives appearing before the Subcommittee and would submit written comments.

Public Protection and Regulation Cabinet: Department of Insurance: Health Insurance Contracts

806 KAR 17:081. Minimum standards for long-term insurance policies.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:025. Licensing thoroughbred racing.

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: Manufactured Homes and Recreational Vehicles

815 KAR 25:010. Manufactured homes.

The Subcommittee adjourned at 11 a.m. until January 4, 1993 at 2 p.m. in Room 131 of the Capitol Annex.

32 KAR 2:070. Fundraiser registration. Section 1 of this administrative regulation was amended to delete the words "As used in this administrative regulation".

32 KAR 2:080. Political activities of registry members and employees. Section 1 of this administrative regulation was amended to conform to KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

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. This administrative regulation was amended to conform to the drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b).

Subcommittee staff stated that at the ARRS November meeting the Subcommittee considered an amendment to 105 KAR 1:020, the Reciprocal program between CERS, KERS, SPRS, TRS and Legislators' Retirement Plan. At that meeting, Chairman Kerr noted that two companion administrative regulations relating to reciprocity and combined service credits also needed to be amended to conform to the statutory requirements of KRS 161.675(2).

At the December meeting, 102 KAR 1:185, Section 7, was amended by the Retirement System to allow combined service credit from other Kentucky retirement systems to be used to determine eligibility for participation in the medical insurance program. Chairman Kerr stated that 102 KAR 1:100 must also be amended in the same manner in order to conform to KRS 161.675(2).

Senator McCuiston asked agency personnel to explain what the various reciprocal agreements mean. Agency personnel stated that the reciprocal agreement pertains specifically to medical insurance for all retirement systems: if an individual has service credits in more than one system, medical insurance can be coordinated in the same manner as retirement benefits.

Board of Claims

108 KAR 1:010. Board operation and claim procedure. An objection had been raised to Section 4(4), requiring Board permission before testimony, oral argument, or other appearance by parties before the Board. KRS 44.086(6) provides that appearance before the Board is at the Board's discretion. This administrative regulation was amended to delete Section 4(4) because it summarized KRS 44.086(6), in violation of KRS 13A.120(2)(e). Section 1(3) provided that the Board shall be in continuous session. However, KRS 44.080 provides that the Board shall hold regular sessions in January, May and September, and shall hold special sessions as it deems necessary. At the Board meetings held on the months specified by KRS Chapter 44, the Board may determine that it needs to meet the next month. However, it cannot by administrative regulation be in continuous session. Therefore, Section 1(3) was deleted. The NECESSITY AND FUNCTION paragraph was amended to insert the word "administrative" before the word "regulation", to comply with the statutory term specified in KRS 13A.010(2).

Board of Chiropractic Examiners

201 KAR 21:100. Minimum standards for recordkeeping/ itemized statements. Section 1(2)(e) was amended by deleting the words "initials or other designation in a multi-doctor facility" and inserting the word "name" in lieu thereof. KRS 312.019(9)(j) specifies that an administrative regulation may be promulgated to require the "name" of the treating chiropractor to be included in a record or report; it did not permit other designations.

Justice Cabinet: Peace Officer Death Benefits

The three administrative regulations listed below were amended to: (1) Expand the tiering statement to fully state why tiering was not applied; (2) explain in detail in the tiering statement that failure to apply these administrative regulations equally could result in arbitrary action on the part of the agency thereby implicating the "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution; and (3) Insert the word "administrative" before the word "regulation" where necessary.

The Cabinet had no objection to the first sentence of the expanded tiering statement which stated that: "Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it." The Cabinet initially objected to the language: "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 personnel stated that the language relating to potential constitutional violations was unnecessary and could produce lawsuits. Subcommittee staff pointed out that the amendment would provide protection to the Cabinet in the event of lawsuits and that legal reasoning is a necessary part of the decision not to apply tiering.

KRS 13A.210(1) places a duty on the Cabinet to apply tiering whenever possible in order to "reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address...."

If an agency does not tier an administrative regulation, it should state, in detail, the reasons why it did not tier.

Cabinet personnel stated that this administrative regulation applies equally to all "dead police officers" in the class intended to be regulated by the Cabinet. Subcommittee staff pointed out that the Cabinet is required by the state and federal constitution to apply this administrative regulation to all members of the class regulated by this administrative regulation.

Chairman Kerr stated that he felt the language was helpful because it completely explained why tiering was not used. Cabinet personnel agreed to the amendment.

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

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to: (1) Delete "will" and insert "shall" on Page 4, 2. of policy WKCC 20-03-01, pursuant to KRS 13A.222(4)(b); (2) Change WKCC 20-03-01 to WKCC 20-01-01 on pages 2, 3 and 5 of policy WKCC 20-01-01; (3) Change "are" to "shall be" on page 8, I of policy WKCC 06-00-01, pursuant to KRS 13A.222(4)(b); (4) Insert references to KRS 61.898, KRS 196.035; and KRS 197.020 in policy WKCC 06-00-01 (5) Delete "is governed" and insert "shall be governed" on page 9,2. in policy WKCC 06-00-01, pursuant to KRS 13A.222(4)(b); (6) Delete "is" and insert "shall also be" on page 9, 3. in policy WKCC 06-00-01, pursuant to KRS 13A.222(4)(b); and (7) Delete "medial" and insert "medical" on page 12(8) in policy WKCC 06-00-01.

Chairman Kerr pointed out that these amendments were not submitted to the Regulations Compiler within five (5) working days of the meeting as required by KRS 13A.320(2)(b). Cabinet personnel stated that none of the amendments were substantive but were merely corrections of typographical errors, deletion of superfluous sections and staff amendments. The subcommittee approved a motion to waive the five working day requirement and adopt the amendments offered by the Cabinet.

Transportation Cabinet: Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises. Chairman Kerr noted that this adminis-

trative regulation was published in the Administrative Register to be "tentatively" heard by the ARRS on the second day of its December meeting. He stated that the Subcommittee would review the administrative regulation on the first day of its December meeting, to accommodate a scheduling conflict the agency representative had, with the understanding that any person wishing to testify would be given a full opportunity on the second day.

This administrative regulation was amended as follows: (1) Numerous sections were amended to conform to drafting requirements of KRS 13A.220(4), relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

Representative Bruce stated: (1) this is a significant regulation; (2) he supports what the Cabinet is trying to accomplish. He asked agency representatives to explain briefly in what ways the Cabinet is amending this administrative regulation. Cabinet personnel responded that a federal mandate requires the Cabinet to issue a certain percentage of contracts to firms which are certified as a Disadvantaged Business Enterprise (DBE). The federal mandate further requires the Cabinet to establish a management development program to assist DBE's to operate in an efficient and effective manner.

Representative Bruce asked if there was any provision in this administrative regulation to assist DBE's in obtaining bonding. Cabinet personnel responded that this administrative regulation does not include such a provision; however, the Office of Minority Affairs is planning to propose a pilot loan program which would address bonding concerns.

Chairman Kerr asked whether an individual has to establish that he is a member of a minority. Cabinet personnel replied that he must establish that he is a member of a disadvantaged group which is established by federal regulation. Chairman Kerr stated that he understood persons who may not appear to have Indian lineage may be eligible for participation in this program if they have a particular degree of Indian blood. Cabinet personnel confirmed this.

600 KAR 4:020. The disadvantaged, minority and women business enterprise program. Numerous sections of this administrative regulation were amended to conform to drafting requirements of KRS 13A.220(4), relating to format, and KRS 13A.222(4)(b), requiring "shall" to express what is mandatory, and "may" to express what is permissive.

Education and Humanities Cabinet: Education Professional Standards Board

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval. Sections 1 and 2 of this administrative regulation were deleted. The substance of these were amended and combined as a new Section 1 which standardized the statement relating to material incorporated by reference.

704 KAR 20:165. Qualifications for professional school positions. This administrative regulation was amended to conform to KRS 13A.222(4). Chairman Kerr stated that the Office of Education Accountability raised some concerns with Sections 6, 7 and 11 of this administrative regulation. Board Representatives acknowledged that they would work with representatives from OEA to address the concerns raised relating to these sections and would return to the ARRS with suggested changes in the next review period.

704 KAR 20:210. Substitute teachers. This administrative regulation was amended to conform to KRS 13A.222(4).

Northern Kentucky University: Board of Regents

The following six administrative regulations were amended to conform to KRS 13A.120(2)(e) by deleting language that repeated KRS Chapter 164A.

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.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedure. The STATUTORY AUTHORITY line, NECESSITY AND FUNCTION paragraph, and Sections 1, 2, 3, 4, 7, 8, 9 were amended to conform to the drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b), (c) by: (1) inserting in all sections the word "administrative" before regulation; (2) expressing mandatory requirements by "shall"; (3) deleting prohibited words and phrases; and (4) reorganizing the format and language to clarify the requirements of this administrative regulation.

Representative Yates asked agency personnel to explain the term "referee laboratory". Agency personnel responded that the term simply refers to a second opinion. As a matter of practice the Commission sends horse specimens to a laboratory in California. If a specimen is then returned from that laboratory with a notification that a horse tested positive for a prohibited medication, the horse owner is entitled to a second opinion which is the referee laboratory.

810 KAR 1:027. Entries, subscriptions and declarations. Sections 2, 3, 4, 5, 6, 8, 10, 13, 14, 15 were amended to conform to the drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b), (c) by: (1) inserting in all sections the word "administrative" before regulation; (2) expressing mandatory requirements by "shall"; (3) deleting prohibited words and phrases; and (4) reorganizing the format and language to clarify the requirements of this administrative regulation.

Chairman Kerr asked if the Commission has promulgated an administrative regulation relating to jockey safety standards, that is required by law. Commission personnel responded that the Chairman of the Commission has appointed a four member committee to promulgate safety administrative regulations for both jockeys and drivers of harness races. Chairman Kerr noted that this issue was initially discussed at the Subcommittee's July 1992 meeting.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:025. Kentucky building code. This administrative regulation was amended to: (1) Add a reference to the BOCA National Building Code/1990, Eleventh Edition, Articles 2 through 32 and Appendices A through D in the NECESSITY AND FUNCTION paragraph, Section 1 and Section 1(1); and (2) Insert the words "and in its place" and "shall be" in Section 2(2).

Standards of Safety

815 KAR 10:040. Fire prevention code. This administrative regulation was amended to delete the language in Section 1 which states that definitions in this administrative regulation were also to "be incorporated in Article 2, Section 201 of the Kentucky Standards of Safety."

Plumbing

The following three administrative regulations were amended to conform to drafting and format requirements of KRS 13A.220(4) and KRS 13A.222(4)(b), (c).

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. Representative Bruce asked what amendment the Department was proposing for this administrative regulation. Department personnel explained that the amendment clarifies that up to three water closets may be discharged into any three (3) inch line, and that this relates to interior plumbing, not to the septic systems.

815 KAR 20:110. Traps and clean-outs.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of November 24, 1992

The Interim Joint Committee on Business Organizations and Professions met on Tuesday, November 24, 1992, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A: 201 KAR 31:010, Board of Registration for Professional Geologists.

The Committee adjourned at 1:45 p.m.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of November 23, 1992

The Interim Joint committee on Agriculture and Natural Resources met Monday, November 23, 1992, and submits the following report:

The Committee determined that Natural Resources and Environmental Protection Cabinet administrative regulations 405 KAR 7:001 & E, 405 KAR 7:091 & E, 405 KAR 7:092 & E, 405 KAR 8:001, and 405 KAR 12:020 & E are in compliance with KRS Chapter 13A.

The Committee determined that Department of Fish and Wildlife Resources administrative regulations 301 KAR 2:220 & E and 301 KAR 4:020 are in compliance with KRS Chapter 13A.

The meeting adjourned November 23, 1992 at 2:40 p.m.

INTERIM JOINT COMMITTEE ON COUNTIES AND SPECIAL DISTRICTS
Meeting of November 12, 1992

On November 12, 1992, the Interim Joint Committee on Counties and Special Districts reviewed 45 KAR 1:060, and took no action.

CONSTITUTIONAL AMENDMENTS TASK FORCE
Meeting of December 4, 1992

At its December 4, 1992 meeting, the Task Force on Elections and Constitutional Amendments reviewed 32 KAR 1:010E promulgated by the Registry of Election Finance and had no objections to its provisions. This emergency administrative regulation is due to expire this month and we have been informed by the Registry that this will not be replaced by an ordinary administrative regulation.

INTERIM JOINT COMMITTEE ON CITIES
Meeting of December 8, 1992

The Interim Joint Committee on Cities met on December 8, 1992, and submits this report:

The Committee determined that the following regulations, relating to plumbing, complied with KRS Chapter 13A and has approved such regulations without objection:

815 KAR 20:020 - Parts or materials list
815 KAR 20:060 - Quality and weight of materials
815 KAR 20:070 - Plumbing fixtures
815 KAR 20:074 - Installation standards for steel and wrought iron pipe
815 KAR 20:075 - Installation recommendations for polybutylene tubing for hot and cold water distribution systems
815 KAR 20:076 - Installation recommendations for polybutylene (PB) cold water building supply, yard piping and tubing
815 KAR 20:077 - Storage and installation of aluminum soil, waste, vent and storm water piping and fittings
815 KAR 20:100 - Joints and connections

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of December 1, 1992

The Interim Joint Committee on Transportation met on Tuesday, December 1, 1992, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A: 603 KAR 5:110 & E.

The Committee adjourned at 2 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of December 9, 1992

The Committee reviewed the following administrative regulations this date and found that they comply with KRS Chapter 13A:

LEGISLATIVE RESEARCH COMMISSION
1 KAR 3:006 (Repeal of 1 KAR 3:005)

PERSONNEL BOARD
101 KAR 1:325 (Probationary periods)

KENTUCKY RETIREMENT SYSTEMS
105 KAR 1:020 (Reciprocal program between CERS, KERS, SPRS, TRS and Legislators' Retirement Plan)
105 KAR 1:150 (Installment purchase procedures)
105 KAR 1:160 (Sick leave plans)
105 KAR 1:180 (Death before retirement procedures)
105 KAR 1:210 (Disability procedures)
105 KAR 1:215 (Administrative hearing)
105 KAR 1:250 (Participation of county attorney employees)
105 KAR 1:260 (Purchase of out of state service credit)

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of December 11, 1992

The Interim Joint Committee on Business Organizations and Professions met on Friday, December 11, 1992, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A:

Board of Examiners of Social Work - 201 KAR 23:020
Kentucky Racing Commission - 810 KAR 1:018, 810 KAR 1:027

The Committee adjourned at 2:55 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates G2

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 G11

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 G20

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

Regulation Number	19 Ky.R Page No.	Effective Date

VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

201 KAR 18:040E	3310	4-27-92
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:

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.

1 KAR 6:020E	1048	9-18-92
11 KAR 4:020E	677	7-9-92
Replaced	921	12-9-92
13 KAR 2:060E	1517	12-10-92
32 KAR 1:010E	859	8-19-92
Expires		1-29-93
32 KAR 2:020E	1048	10-6-92
32 KAR 2:030E	1049	10-6-92
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