

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 SUBCOMMITTEE
TENTATIVE AGENDA - February 1, 1993 at 2 p.m.
Room 131, State Capitol Annex**

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Loan Program

- 11 KAR 3:001. Definitions.
- 11 KAR 3:015. Borrower eligibility.
- 11 KAR 3:025. Eligible program.
- 11 KAR 3:035. Maximum loan amounts.
- 11 KAR 3:045. Permissible charges by lenders to borrowers.
- 11 KAR 3:055. Obtaining and repaying a loan.
- 11 KAR 3:061. Repeal of 11 KAR 3:060.

KHEAA Grant Program

- 11 KAR 5:001. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations.
- 11 KAR 5:130. Student application.
- 11 KAR 5:140. KTG award determination procedure.
- 11 KAR 5:145. CAP grant award determination procedure.

COUNCIL ON HIGHER EDUCATION

Public Educational Institutions

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

PERSONNEL

Personnel Board

- 101 KAR 1:335. Employee actions.

Classified

- 101 KAR 2:066. Certification and selection of eligibles for appointment.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEMS

General Rules

- 105 KAR 1:040. Actuarial assumptions and tables. (Deferred from January)

DEPARTMENT FOR MILITARY AFFAIRS

Disaster and Emergency Services

- 106 KAR 1:075. Local disaster and emergency services organizational standards. (Repeals 106 KAR 1:070)

GENERAL GOVERNMENT CABINET

Board of Accountancy

- 201 KAR 1:063. Certification of experience. (Repeals 201 KAR 1:062)
- 201 KAR 1:130. Examination application procedure.

Board of Pharmacy

- 201 KAR 2:210 & E. Patient records and patient counseling.

Real Estate Commission

- 201 KAR 11:350. Seller's disclosure of condition form.

Board of Registration for Professional Engineers and Land Surveyors.

- 201 KAR 18:180 & E. Firm registration.
- 201 KAR 18:190 & E. Continuing education.

Board of Nursing

- 201 KAR 20:070. Licensure by examination.
- 201 KAR 20:090. Temporary work permit.
- 201 KAR 20:095. Inactive nurse licensure status.
- 201 KAR 20:110. Licensure by endorsement.
- 201 KAR 20:225. Reinstatement of license.
- 201 KAR 20:230. Renewal of license.
- 201 KAR 20:250. Definitions for registered & practical nurse prelicensure programs of nursing.
- 201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Waste Management

Solid Waste Planning

- 401 KAR 49:220. Waste tire trust fund loan program. (Amended After Hearing) (Deferred from January)
- 401 KAR 49:230. Waste tire trust fund grant program. (Amended After Hearing) (Deferred from January)

Division for Air Quality

General Standards of Performance

- 401 KAR 63:035. Gasoline dispensing facilities, stage II. (Amended After Hearing)

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Petroleum Storage Tank Environmental Assurance Fund Commission

- 415 KAR 1:050 & E. Definitions. (Repeals 415 KAR 1:010; 415 KAR 1:020; 415 KAR 1:030; 415 KAR 1:040.) (Amended After Hearing)
- 415 KAR 1:060 & E. Financial responsibility account. (Amended After Hearing)
- 415 KAR 1:070 & E. Petroleum storage tank account. (Amended After Hearing)

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- 415 KAR 1:080 & E. Claims procedures. (Amended After Hearing)
- 415 KAR 1:090 & E. Ranking system. (Amended After Hearing)
- 415 KAR 1:100 & E. Third party claims. (Not Amended After Hearing)
- 415 KAR 1:120 & E. Hearings. (Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE TENTATIVE AGENDA - February 2, 1993 at 10 a.m. Room 131, State Capitol Annex

JUSTICE CABINET Department of Corrections

Office of the Secretary

- 501 KAR 6:020 & E. Corrections policies and procedures.
- 501 KAR 6:030. Kentucky State Reformatory.

TRANSPORTATION CABINET Department of Highways

Traffic

- 603 KAR 5:301. Weight classification of the state-maintained system of highways.

EDUCATION, ARTS AND HUMANITIES CABINET Department of Education

Office of District Support Services

School District Finance

- 702 KAR 3:245 & E. School council allocation formula. (Repeals 702 KAR 3:240.) (Not Amended After Hearing)

Bureau for Learning Results Services

- 703 KAR 4:010. The formula for determining successful schools.
- 703 KAR 4:040. Interim methods for verifying successful completion of the primary program.

Office of Learning Programs Development

Instruction

- 704 KAR 3:450. Textbook and instructional material adoption process. (Not Amended After Hearing)

Learning Support Services

- 704 KAR 7:110. School council policy rejection; appeal procedure. (Amended After Hearing)

Elementary and Secondary Education Act

- 704 KAR 10:050. Authority to approve courses not in program of studies. (Deferred from January)

WORKFORCE DEVELOPMENT CABINET Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees

- 780 KAR 3:070. Attendance.

Unclassified Personnel Regulations

- 780 KAR 6:060. Attendance.

Department of Vocational Rehabilitation

Administration

- 781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation. (Amended After Hearing)

LABOR CABINET

Workers' Compensation Board

- 803 KAR 25:011. Procedure for adjustments of claims. (Not Amended After Hearing)
- 803 KAR 25:012. Resolution of medical fee disputes. (Not Amended After Hearing)
- 803 KAR 25:095. Statements for medical services. (Amended After Hearing)
- 803 KAR 25:096. Selection of physicians and treatment plans. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET

Public Service Commission

Utilities

- 807 KAR 5:001. Rules of procedure. (Amended After Hearing) (Deferred from January)

Kentucky Racing Commission

Thoroughbred Racing

- 810 KAR 1:025. Licensing thoroughbred racing. (Deferred from December)

Harness Racing

- 811 KAR 1:180. Personnel to be licensed; fees. (Deferred from December)

Quarter horse, Appaloosa and Arabian Racing

- 811 KAR 2:020. Licensing procedures. (Deferred from December)

Department of Housing, Buildings and Construction

Plumbing

- 815 KAR 20:130. House sewers and storm water piping; methods of installation.

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CABINET FOR HUMAN RESOURCES

Sanitation

902 KAR 10:045. Tattoo studio sanitary procedures. (Not Amended After Hearing)

Emergency Medical Services

902 KAR 14:010. Emergency medical services (EMS) personnel funding assistance.

902 KAR 14:020. Allocation of funding assistance for purchase of ambulance and equipment for emergency medical services (EMS).

Health Services and Facilities

902 KAR 20:330 & E. Psychiatric residential treatment facilities. (Amended After Hearing) (Deferred from January)

Controlled Substance

902 KAR 55:040. Exempt over the counter preparations.

902 KAR 55:045. Exempt prescription preparations.

Department for Social Services

Day Care

905 KAR 2:001. Definitions for Title 905 Chapter 2.

905 KAR 2:011. Repealer of 905 KAR 2:010.

905 KAR 2:090. Child care facility licensure.

905 KAR 2:110. Child care facility provider requirements.

905 KAR 2:120. Child care facility health and safety standards.

905 KAR 2:130. Child care discipline.

Aging Services

905 KAR 8:230. Adult day care center certification. (Amended After Hearing)

Department for Medicaid Services

Medicaid Services

907 KAR 1:450. Nurse aide training criteria and registry. (Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
201 KAR 2:210E

This administrative regulation has been determined by the present members of the Kentucky Board of Pharmacy to be in need of emergency enactment in order to bring into compliance the Practice of Pharmacy with the federally mandated Omnibus Budget Reconciliation Act of 1990, 42 CFR Part 456, and to allow pharmacists in Kentucky to practice legally after January 1, 1993, the date of compliance of this Act. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on December 10, 1992.

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:210E. 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

EFFECTIVE: January 5, 1993

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

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(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. HOUCHEMS, President

APPROVED BY AGENCY: December 9, 1992

FILED WITH LRC: January 5, 1993 at 11 a.m.

STATEMENT OF EMERGENCY 201 KAR 18:180E

This emergency administrative regulation establishes procedures for engineering firm registration by this board. Engineering firm registration was mandated by the 1992 General Assembly (KRS 322.060). This regulation has been approved by the board with an effective date of January 1, 1993. The board has determined the existence of an emergency as it regards this regulation because an ordinary regulation will not go into effect in time to begin the processing by January 1. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December 14, 1992.

BRERETON C. JONES, Governor
GEORGE M. ELY, Chairman

GENERAL GOVERNMENT CABINET Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:180E. Firm registration.

RELATES TO: KRS 322.060
STATUTORY AUTHORITY: KRS 322.060, 322.070, 322.290
EFFECTIVE: December 21, 1992

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 21, 1992 at 4 p.m.

STATEMENT OF EMERGENCY 201 KAR 18:190E

This emergency administrative regulation establishes procedures for implementing continuing education for land surveyors registered by this board. Continuing education for land surveyors was mandated by the 1992 General Assembly. This regulation has been approved by the board with an effective date of January 1, 1993. The board has determined the existence of an emergency as it regards this regulation because an ordinary regulation will not go into effect in time to begin the processing by January 1. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December 14, 1992.

BRERETON C. JONES, Governor
GEORGE M. ELY, Chairman

GENERAL GOVERNMENT CABINET
Board of Registration for
Professional Engineers and Land Surveyors

201 KAR 18:190E. Continuing education.

RELATES TO: KRS 322.290(h)

STATUTORY AUTHORITY: KRS 322.290(h)

EFFECTIVE: December 21, 1992

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 professional 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

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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 prefilling 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 21, 1992 at 4 p.m.

STATEMENT OF EMERGENCY 501 KAR 1:060E

In order to ensure that the Kentucky Parole Board conducts its parole and parole revocation hearings consistently with all applicable statutes it is necessary to implement this emergency regulation. The Office of Attorney General has issued a formal opinion OAG 92-146 which declares that parole hearings, except for the deliberation phase, are open to the public and fall under the provisions of the Open Meetings Law. In order to comply with this opinion it is necessary to create this regulation on an emergency basis. This emergency regulation will be replaced by the ordinary administrative regulation filed with the Legislative Research Commission on December 23, 1992 in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JOHN C. RUNDA, Chairman

KENTUCKY PAROLE BOARD

501 KAR 1:060E. Conducting parole and parole revocation hearings.

RELATES TO: KRS 61.800, 439.340

STATUTORY AUTHORITY: KRS 439.330 (1)(g), 439.340 (3)

EFFECTIVE: January 6, 1993

NECESSITY AND FUNCTION: KRS 439.340(3) authorizes the parole board to adopt regulations with respect to the conduct of parole and parole revocation hearings. The purpose of this regulation is to describe the parole hearing process and how the public is to be accommodated.

Section 1. Parole hearings are open to the public except as limited by the exemption of parole deliberations under the Open Meetings Law (KRS 61.810(1)(a)), the right of victims to request a closed hearing for their presentation (KRS 439.340(7)), the State Fire Code (815 KAR10:040), or persons excluded from visiting prisons (501 KAR 2:020, Section 1).

(1) Persons desiring to attend parole hearings shall submit a written notice to the parole board not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the hearing, of their intention to attend the hearing. The written notice shall include the person's name, address, telephone number (if available) and Social Security number.

(2) The parole board shall submit such notices to the warden of the institution where the parole hearing is to be conducted.

(3) Persons in attendance, except for the parole board and the inmate, shall observe only. No one shall be permitted to address the parole board or inmate except as provided in KRS 439.340 (6)(7). If a majority of the sitting board deem and individual disruptive, he may be removed by institutional staff.

(4) Electronic recording devices of any type shall not be permitted.

(5) All persons in attendance, except for the parole board staff, shall leave the parole hearing room during the deliberations of the board.

(6) The parole board may go into the executive session at any time in order to discuss statutorily confidential information.

(7) After the parole board deliberates the public shall be readmitted to the hearing room for the parole board to deliver its decision to the inmate.

Section 2. The parole hearing shall be conducted in the following

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manner:

(1) Each inmate eligible for a parole hearing shall personally appear before the parole board.

(2) An inmate may waive his right to a personal appearance before the board by submitting a signed, dated and witnessed statement to that effect. The statement shall be witnessed by the institutional parole officer or someone who serves in a similar capacity.

(3) The parole board shall conduct an interview based upon the pertinent information contained in the inmate's file.

(4) The inmate shall be permitted to make any statement on his own behalf which either mitigates the crime or describes his rehabilitative efforts.

(5) At the conclusion of the interview the inmate shall leave the hearing room during the deliberation of the board.

(6) After the deliberation is complete the inmate shall return to the hearing room to receive the board's decision.

(7) The decision of the board shall be delivered in writing or orally.

JOHN C. RUNDA, Ph.D., Chairman

APPROVED BY AGENCY: December 23, 1992

FILED WITH LRC: January 6, 1993 at 9 a.m.

STATEMENT OF EMERGENCY 810 KAR 1:030E

The 1992 Regular Session of the General Assembly enacted the conditions under which simulcast facilities may be established. Part of that process includes conformity to the administrative regulations. Much time has been spent in creating the requirements for these administrative regulations and it is necessary to have them in place in order that two (2) local communities now desiring to establish such simulcast facilities may proceed. The normal time required for filing an ordinary regulation would unfairly detain these communities from the ability to proceed in a prompt manner which would cost both the horse industry and the local governments. The emergency regulation shall be replaced by an ordinary regulation which will be filed with the Regulations Compiler on December 22, 1992. However, without the immediate authority as granted by the emergency provisions, the local communities will not be in a position to proceed with their simulcast facilities.

BRERETON C. JONES, Governor
WAYNE G. LYSTER, III, Chairman

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission

810 KAR 1:030E. Simulcast facilities.

RELATES TO: KRS 230.380

STATUTORY AUTHORITY: KRS Chapter 13A

EFFECTIVE: December 29, 1992

NECESSITY AND FUNCTION: Defines the procedures necessary for a licensed host track, tracks, or entity wholly owned by two (2) or more licensed tracks to obtain approval from the commission for the initial license and the annual renewal license of a simulcast facility as required by statute.

Section 1. Initial License Application. A licensed host track, tracks, or entity wholly owned by two (2) or more licensed tracks, shall submit the following list of information to apply for a license to operate each simulcast facility. Any changes in the information provided must be supplied to the commission as changes occur and any such changes shall be subject to commission approval.

(1) Name of host track, tracks, or entity as defined in this section operating the simulcast facility. If the applicant is an entity wholly owned by two (2) or more licensed tracks, provide: the name of the participating licensed tracks; copies of organizational documents; name of the entity; location of principle office; and names of officers and directors.

(2) Location of simulcast facility.

(3) Owner of the real property on which the simulcast facility shall be located, including street address.

(4) Name, type, and owner of any business enterprise that may be at that same location, building, or street address.

(5) Name, address, and home phone number of on-site manager of the simulcast facility.

(6) Schedule of races to be simulcast identifying the host tracks.

(7) Description of facilities including:

(a) Total capacity;

(b) Seating capacity excluding dining;

(c) Dining;

(d) Washrooms;

(e) Parking; give location and distance to simulcast facility.

(8) Identify the authority for the sale of alcohol if applicable.

(9) Name of supplier of concessions, food, and alcohol services.

(10) Name of totalizator service and mutuel manager.

(11) Name of and distance to nearest other licensed racing association or ITW facility as allowed by KRS 230.210(10).

(12) Location of and distance to nearest lottery vendor.

Section 2. The information required in Section 1(3), (4), (5), (7), (9), (10), (11) and (12) of this administrative regulation may be supplied after the initial application, but not later than five (5) days before the facility would commence operations.

Section 3. Annual Review for Renewal. A licensed host track, tracks, or entity as defined in Section 1 of this administrative regulation, shall submit the following list of information for the commission to renew the license for an existing simulcast facility.

(1) The application to renew a license for a simulcast facility shall be filed no later than November 1 in the year preceding the year for which the license may be issued and shall include all information required by Section 1(1) through (10) of this administrative regulation.

(2) The provisions of KRS 230.380 (2) and (3) shall not apply to the annual renewal of a license for a simulcast facility.

Section 4. General Requirements. All simulcast facilities must be kept in an excellent state of repair and shall be operated to ensure that the image of racing and pari-mutuel wagering is enhanced. All simulcast facilities shall provide adequate security for the public to assure the perception and fact of an honest enterprise free of corrupt practices.

(1) All pari-mutuel wagering must be conducted through a host track licensed by the commission. All interstate wagering shall be received only through a host track licensed by the commission. Any malfunction of the totalizator shall be immediately reported to the host track and to the commission; any action needed to correct the mutuel pools at a simulcast facility shall be calculated by the mutuel manager of the host track. Pools shall be limited to the host track's pools and all payoffs shall be consistent with the common pools of the host track.

(2) All simulcast facilities shall meet all local and state fire and life safety codes at all times. All accidents resulting in injury shall be reported to the commission and any crimes on the property shall also be reported.

(3) Food and dining services must be of good quality, so as to promote the image of racing and that of a quality establishment.

(4) Proper smoke ventilation shall be provided to ensure adequate fresh air for all designated smoking sections.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 21, 1992

FILED WITH LRC: December 29, 1992 at 9 a.m.

STATEMENT OF EMERGENCY

907 KAR 1:025E

This emergency administrative regulation is being promulgated to allow for refinancing of long-term facility debt at lower rates; it is necessary to promulgate this regulation on an emergency basis to maximize savings of state funds. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 24, 1992 as follows: this regulation allows for refinancing of long-term facility debt. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about January 1, 1993.

BRERETON JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

EFFECTIVE: January 13, 1993

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

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

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

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

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

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

(13) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(14) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the [such] prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(15) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

- (a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.
- (b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.
- (c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depres-

sors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a [skilled] nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this administrative regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medicaid [Medical Assistance] Program Nursing Facility Reimbursement Manual, revised January 1, 1993 [July 1, 1992] which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid [Medical Assistance] Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system

includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

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

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

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

median of the allowable per diem cost array for the facilities (urban or rural as applicable).

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

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

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

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

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

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

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem.

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

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

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

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

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

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

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final

settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

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

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

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

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

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

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

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

reasonableness of the costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by

the program shall be so indicated with a description and rationale as a supplement to the cost report.

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

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

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

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

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

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

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

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

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

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

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

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those

facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

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

(Effective 10-1-90)

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

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

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

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

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status

(high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1993.

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

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;
- (5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;
- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general

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policies and procedures in accordance with the following:

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

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

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after January 1, 1993 ~~[July 1, 1992]~~.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: December 22, 1992

FILED WITH LRC: January 13, 1993 at 11 a.m.

REGULATION AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(As Amended)

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101 [~~Chapters 44, 45~~]

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY AND FUNCTION: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt regulations for that purpose. The purpose of this regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury. The amendments to this regulation: (1) defines the term "agency head" and the phrase "others in the official service of the Commonwealth"; (2) clarifies those individuals eligible for travel reimbursement; (3) establishes the requirement that all out-of-state travel must be authorized in advance by the agency head and the Secretary of the Finance and Administration Cabinet or their designees; (4) establishes the requirement that travel outside the United States, its possessions and Canada shall be authorized by the agency head, the secretary and the Governor or the designated representatives; (5) clarifies the eligibility requirements for receiving subsistence while traveling in and outside Kentucky; (6) clarifies those persons eligible for reimbursement for actual and necessary expenses; and (7) establishes the documentation required to receive reimbursement for actual and necessary expenses. [~~This amendment revises the reimbursement rates for travel expenses, and incorporates the Finance and Administrative Cabinet's travel reimbursement forms by reference as provided in KRS 13A.224.]~~]

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

(1) "Cabinet" means the Finance and Administration Cabinet.

(2) "Division" means the Division of Accounts of the Finance and Administration Cabinet.

(3) "High rate area" means a city or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area. The cabinet's policies and procedures manual contains a list of "high rate areas".

(4) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(5) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(6) "Agency head" means the elected or appointed head of a budget unit.

(7) "Others in the official service of the Commonwealth" means persons who are not state employees as defined in KRS Chapter 18A, but who are travelling on official business for the Commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request. This definition shall not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the Commonwealth.

(8) ~~[(6)]~~ "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for

lodging or in registration fees paid by or on behalf of a state officer or employee.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement.

(a) Each agency head **shall be [is]** responsible for insuring that all travel expense from that agency is as economical as is feasible.

(b) **A person [All persons]** who travels on official state business shall:

1. State on the travel voucher the purpose of each trip;

2. ~~[-shall]~~ Maintain records and receipts to support **his [their]** claim[s]; and

3. ~~[shall]~~ Provide **himself [themselves]** with sufficient personal funds to defray **his [their]** travel expense.

(c) **A travel expense claim shall be submitted on Travel Voucher (DOA-34).** ~~[All travel expense claims are to be submitted on the travel expense claim form prescribed by the cabinet (DOA-34 and DOA-35).]~~

(d) **The secretary shall be responsible for ensuring that travel reimbursement conforms to the provision of this administrative regulation.**

(e) The secretary or his designee may:

1. **Disallow, or reduce the amount of a claim that violates the provisions of this administrative regulation; or**

2. **Require written justification from an agency head for amounts claimed by an agency for its employee.**

(f) **The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or his designee, submits a written determination that establishes that such reimbursement is:**

1. **Required to avoid an undue economic hardship on the employee; or**

2. **Economically advantageous for the Commonwealth.** ~~[4. The secretary is responsible for insuring that all travel reimbursement conforms to this regulation. The secretary or his designee may disallow, reduce or strike from travel vouchers any claims contrary to this regulation. The secretary or his designee may also require written justification from agency heads for amounts claimed by their agencies and employees.~~

2. ~~The secretary or his designee may approve exceptions where he finds such exception in the best interest of the Commonwealth.]~~

(3) Eligibility. Except as provided by state law or by this regulation, ~~no~~ reimbursement **shall not [can]** be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel **shall [will]** be reimbursed.

(4) Interpretation. All final interpretations of this regulation shall be made by the secretary. ~~[-and]~~ **These [such]** determination shall be final and conclusive.

Section 3. ~~Definitions]~~ Work Station. (1) The official work station of an employee[s] assigned to an office **shall be [is]** the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth, not an employee's convenience. The designation of work station shall not be for the purpose of allowing additional mileage reimbursement for the employee.

(3) If an employee is permanently reassigned, or is stationed at a new place two (2) months, the new place shall become [immediately becomes] that employee's official work station [concerning travel expense].

Section 4. Authorizations. (1) For travel in Kentucky the person requesting reimbursement shall obtain authorization from the agency head or a designated representative.

(2) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (3) through (5) of this section.

(3) For travel outside Kentucky, but within the United States or its possessions, or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head; and

(b) The secretary; or

(c) Their designated representatives.

(d) Authorization shall be requested on "Request for Authorization of Out-of-State Travel (DOA-28)".

(4) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head; and

(b) The secretary; and

(c) The governor; or

(d) Their designated representatives.

(e) Authorization shall be requested on "Request for Out-of-Country Travel (DOA-28(A))".

(5) A travel request for travel specified in subsections (3) and (4) of this section shall be received by the cabinet at least five (5) working days before start of travel. [No travel expense shall be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky [and within the other forty nine (49) states and the District of Columbia and Canada] must be authorized by the agency head or a designated representative. [If four (4) or more persons are to travel to the same out of state destination the agency's request shall explain the necessity for the number of persons traveling and shall also be approved by the secretary or his designee.]

(b) Travel outside Kentucky, but within the other forty nine (49) states, the District of Columbia, U.S. possessions, or Canada, must be authorized in advance by the agency head and the secretary, or by their designated representatives. (The Request for Authorization of Out of state Travel, Form DOA-28, shall be used.)

(c) [(b)] Travel outside the United States, its possessions, and Canada shall [must] be authorized in advance by the agency head, the secretary and the Governor, or by their designated representatives. (The Request for Authorization of Out of country Travel, Form DOA-28(A), shall be used.)

(2) Travel requests requiring approval by the secretary must reach the cabinet at least five (5) working days before the intended start of travel. [(Travel Authorization Forms DOA-28, for four (4) or more persons traveling out of state, and DOA-28(A), for out of country travel, shall be used.)]

Section 5. Transportation. (1) Economy required.

(a) State officers, agents, [and] employees, and others in the official service of the Commonwealth [traveling on state business] shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall [must] be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

(2) State vehicles. State-owned vehicles with their credit cards should be used for state business travel when available and feasible. [No] Mileage payment shall not be claimed if [when] state-owned

vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles may be disallowed if a state vehicle was available and feasible. [No] Reimbursement shall not be paid for travel between residence and work station.

(4) Buses, subways. For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or [I] tourist class. Additional expense for first-class travel shall [will] not be reimbursed by the state.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall [will] be allowed if [only with acceptable] written justification from the agency head or his designated representative is submitted and approved.

(b) Privately-owned aircraft may be used if [only when] it is determined to be to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1) [(a) Economy required.] Lodging shall [costs should] be the most economical, as determined by considering location of the lodging. [that are consistent with the state's best interests].

(2) Facilities providing special government rates or commercial rates shall [will] be used if [where] feasible.

(3) [(b)] State-owned facilities shall be used for meetings and [for] lodging if [where] available, practicable and economical.

(4) [(2)] Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall [will] not be reimbursed.

(5) [(3)(a)] Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall [must] be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The agency shall certify that the person [no employee] is not claiming individual reimbursement or subsistence for the same costs.

(d) "Contract for Rooms and Meals (Form B120-16)" shall be used to contract for group lodging. [The cabinet's Contract for Room and Meals [group accommodations travel form] (Form B120-16) shall be used.]

[(b) For payment, the agency shall forward a receiving report (Purchase Order Authorization for Payment Form DOA-19) with the vendor's bill, the names of affected employees and a copy of the contract to the division. The payment shall not include telephone expenses or personal charges of employees. The state's payment shall be made directly to the hotel, motel, or other establishment.]

(e) For payment, an agency shall forward to the division:

1. Receiving report "Purchase Order Authorization for Payment (Form DOA-19)";

2. The vendor's bill;

3. The names of the employees or others in the official service of the Commonwealth; and

4. A copy of the contract.

(f) Payment shall not include personal charges of employees or others in the official service of the Commonwealth.

(g) Payment shall be made to the hotel, motel, or other establishment.

(h) [(e)] Contracted group meeting rooms and lodging and meal charges are exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Revenue Cabinet shall be specified on the payment document.

(i) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected

with lodging costs. Sales tax payments shall [for which they will] be reimbursed on "Travel Voucher (DOA-34)".

(6)(a) [(4)] State parks. A state agency or institution using state park facilities may pay for rooms and meals by "Interaccount Bill (Form DOA-7)", within the limits of this administrative regulation.

(b) Payment shall include [-using] preapproved Department of Parks "Interaccount Authorization Form (P1-1)".

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor or lieutenant governor;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer, or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer, or employee has attached the hotel, motel, or other establishment's receipt to his travel expense voucher.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate.

(3) Subsistence.

(a) A state officer, or employee shall be eligible for reimbursement for subsistence for breakfast or lunch expenses while traveling in Kentucky, if his authorized work requires an overnight absence:

1. At a destination more than forty (40) miles from his work station and home;

2. During the mealtime hours established by paragraphs (d) and (e) of this subsection.

(b) A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if his authorized work requires an absence:

1. At a destination more than forty (40) miles from his work station and home;

2. During the mealtime hours established by paragraphs (d) and (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection.

(d) Reimbursement for nonhigh rate areas:

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - \$4;

2. Lunch: authorized travel 11 a.m. through 2 p.m. - \$5;

3. Dinner: authorized travel 5 p.m. through 9 p.m. - \$11.

(e) Reimbursement for high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - \$5;

2. Lunch: authorized travel 11 a.m. through 2 p.m. - \$6;

3. Dinner: authorized travel 5 p.m. through 9 p.m. - \$15.

(f) State officers or employees authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may be reimbursed for the actual cost charged for a meal by the organization, if he is assigned to attend a function of an organization that is not under the control of a state officer or employee.

(h) Lodging receipts, or other credible evidence, shall be

attached to the travel voucher.

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall:

1. Be made at the rate of twenty-two (22) cents per mile; and

2. Not exceed the cost of airplane coach fare.

(b) Mileage for instate travel shall be based on the Transportation Cabinet "Official Kentucky Mileage Map". Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas".

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the travel voucher.

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use:

1. Written justification, signed by the agency head, was submitted; and

2. The secretary or his designee approved.

(e) 1. A maximum of ten (10) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

2. A receipt for parking or camping charges shall be submitted with the travel voucher.

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable charges for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for meals shall be reduced accordingly.

(6)(a) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made:

1. Through agency 800 numbers; or

2. Charged to a state government telephone credit card.

(7) Other expenses may be allowed by the secretary or his designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons are eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor or lieutenant governor;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over two (2) dollars.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;

3. Commercial transportation;

4. Taxes related to actual and necessary expenses; and

5. Gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall:

1. Be twenty-two (22) cents per mile; and

2. Not exceed airplane coach fare.

(e) 1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or his designee.

2. The secretary or his designee may:

a. Question a claim for reimbursement; and

b. Reduce the amount to be reimbursed, if he determines that it is excessive.

(f) An employee of the Economic Development Cabinet and the Tourism Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the Commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet. [Reimbursement Rates.

(1) Lodging plus subsistence and other expenses. Except for the Judicial and Legislative branches, their employees, the Governor, and others listed in subsection (2) of this section, and except where otherwise provided by law, the reimbursement for official travel expense shall be as follows:

(a) Lodging. A state officer, agent or employee shall be reimbursed for his actual cost of lodging, if the lodging is determined to be the most economical, and the state officer or employee attaches the hotel's or motel's receipt to his travel expense voucher. A state officer or employee shall not receive reimbursement for lodging that exceeds the cost of a single room rate.

(b) Subsistence.

1. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work must require overnight absence at a destination more than forty (40) miles from both work station and home and must also require absence from work station and home during mealtime hours established by subparagraph 4 of this paragraph. (The claimant shall attach to his travel voucher either his lodging receipts or other credible documentation sufficient for audit.)

2. To be eligible for dinner while traveling in Kentucky, a claimant's authorized work must require absence at a destination of more than forty (40) miles from both home and work station during mealtime hours established by subparagraph 4 of this paragraph.

3. [2.] The requirements in subparagraphs 1 and 2 of this paragraph do not apply to travel [for dinner in Kentucky and for breakfast, lunch and dinner] outside of Kentucky.

4. [3.] Except for high rate areas, subsistence shall not exceed reimbursement rates, and must be within inclusive time periods, as follows:

[4.] Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.)—\$4

Lunch (authorized travel must include 11 a.m. through 2 p.m.)—\$5

Dinner (authorized travel must include 5 p.m. through 9 p.m.)—\$11

5. For travel to high rate areas established by the secretary, subsistence shall not exceed, and must be within the inclusive time periods, as follows:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.)—\$5

Lunch (authorized travel must include 11 a.m. through 2 p.m.)—\$6

Dinner (authorized travel must include 5 p.m. through 9 p.m.)—\$15

6. A state officer or an employee assigned to attend a function of an organization not under the state officer's control may be reimbursed for actual meal cost charged by the organization, instead of subsistence.

(c) Privately owned vehicles. Reimbursement for official use of a privately owned vehicle shall be twenty two (22) cents per mile, and payment shall not exceed airplane coach fare.

(d) Commercial transportation. A state officer or employee shall be reimbursed for the actual cost of commercial transportation upon submission of receipts with a travel voucher.

(e) Privately owned aircraft. Reimbursement for use of privately owned aircraft must have prior approval [may be approved on an out of pocket basis] by the secretary or his designee upon the submission [to the cabinet prior to the travel] of written justification signed by the agency head.

(f) Camping vehicles. Claimants using camping vehicles for lodging shall be reimbursed not more than ten (10) dollars per night, for parking or camping charges. A receipt for parking or camping charges must be submitted with a travel voucher.

(g) Parking and tolls. Actual parking, bridge and toll charges are reimbursable. Toll receipts are not required for in-state travel by two (2) axle vehicles.

(h) Baggage charges. Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging and for storage. Charges for overweight baggage may be allowed if the excess was for official business.

(i) Registration fees. Registration fees required in official travel for admittance to meetings will be allowed. If the fee entitles registrants to meals, claims for subsistence shall be reduced accordingly.

(j) Telephone expenses. Telephone and telegraph costs for necessary official business will be allowed. For economy, calls to agency central offices shall be through agency 800 numbers or charged to a state government telephone credit card, if available. [Calls to agency central offices shall be made collect or through the state's toll free number.]

(k) Other. Where justified, other necessary miscellaneous expenses of official travel may be allowed by the secretary or his designee.

(2) Actual and necessary expense.

(a) Upon submission of receipts for items over two (2) dollars, the actual and necessary cost of official business travel (including lodging, meals, related taxes, gratuities and commercial transportation) may be reimbursed. Credit card receipts are only accepted for meals from those establishments that clearly identify the character of the expenditure. [to the following:]

(b) The following are eligible for actual and necessary expense:

1. Governor and Lieutenant Governor, other statewide elected Constitutional officials, cabinet secretaries, the Governor's staff, state employees traveling on assignment with the Governor or Lieutenant Governor, authorized persons traveling outside the United States and Canada and to members of statutory boards and commissions and other persons in the official service of the Commonwealth.

2. Reimbursement for official use of a privately owned vehicle shall be twenty two (22) cents per mile, and [such] payment shall not exceed airplane coach fare.

(c) [(b)] The Governor and cabinet secretaries may be reimbursed for their actual and necessary costs of entertaining official business guests and shall certify the [such] costs to the secretary or his designee.

(d) [(e)] With certification by the cabinet head, and upon submission of receipts, employees of the Economic Development and Tourism Cabinets may be reimbursed for their actual and necessary costs of entertaining the state's official business guests concerning economic development and industrial and travel promotion.

(e) [(d)] The secretary or his designee may question and reduce

claims if amounts appear excessive.

Section 8. Forms. (1) Travel expense voucher (Form DOA-34).

(a) Use.

1. This form shall be used to claim all reimbursement for travel expense.

2. The voucher shall include the expense of only one (1) person except where an employee pays the expenses for a ward of the Commonwealth or other person for whom the claimant is officially responsible. The [Such] persons' names and status or official relationship to the claimant's agency shall be listed on the voucher.

3. A travel voucher shall ordinarily cover one (1) month or one (1) major trip. The purpose of each trip shall be shown on the voucher. If monthly expenses total less than ten (10) dollars, a voucher may cover as many as six (6) months within the same fiscal year.

4. Each travel expense voucher shall show the claimant's social security number.

(b) Preparation.

1. The travel voucher may be either typed or legibly prepared in ink. All receipts shall be stapled to the back at the upper left corner and shall be forwarded to the Finance and Administration Cabinet with the expense voucher.

2. If leave interrupts official travel, the travel voucher shall show the dates of leave.

(c) Computing mileage. Mileage for in-state travel will be based on Transportation Cabinet official mileage map or on the cabinet's mileage chart if the cabinet issues a map or chart [such]. Out of state mileage will be based on Rand McNally mileage maps. If point of origin is the claimant's residence, mileage will be paid between residence and travel destination or between work station and travel destination, whichever is shorter, except that commuting mileage between home and work station will not be paid.

(d) Vicinity travel. Vicinity travel and authorized travel within claimant's work station shall be listed on separate lines on the expense voucher.

(e) Signatures. Travel vouchers shall be signed and dated by the state officer or employee submitting the claim, the employee's supervisor and the agency head or authorized representative.

(f) Receipts. Except for mileage and subsistence, claimants shall furnish for each expenditure over two (2) dollars the preprinted, receipted bill from the hotel, motel, restaurant, or other establishment. The receipt must establish the amount, date, location and essential character of the expenditure.

(2) Authorization for out of state travel. Travel Authorization Forms DOA-28(A) and DOA-28 shall be used to request authorization for travel to foreign countries and for out of state travel [by groups of four (4) or more persons].

(3) The contract for rooms and meals (Form B120-16). [This form] shall be used for group accommodations as described in Section 6 of this regulation under "Accommodations."

(4) To reimburse nonstate employees, purchase order authorization for payment (DOA-19) shall be used, with a back up document travel authorization form (DOA-34).

(5) [(4)] The travel reimbursement forms referenced in this regulation are hereby incorporated by reference. Copies of these forms will be available to the public Monday through Friday, excluding holidays, from 8 a.m. to 4:30 p.m. at the Division of Accounts, Finance and Administration Cabinet, [Room 330,] Capitol Annex Building, Frankfort, Kentucky.]

Section 9. Forms. (1) A request for authorization for out-of-state travel shall be made on "Request for Authorization of Out-of-State Travel Form (DOA-28)".

(2) A request for authorization for travel out of country shall be made on a "Request for Authorization for Out-of-County Travel (DOA 28A)".

(3) A contract for group accommodations shall be made on

the "Contract for Rooms and Meals Form (B120-16)".

(4) Authorization for reimbursement of others in the official service of the Commonwealth shall be requested on:

(a) "Purchase Authorization For Payment (DOA-19)"; and

(b) A "Travel Voucher Form (DOA-34)".

(5) "Travel Voucher Form (DOA-34)" shall be used to claim reimbursement for travel expenses.

(6) The travel voucher shall be limited to the expenses made by one (1) person for:

(a) Himself; and

(b) If applicable, another person:

1. Who is a ward of the Commonwealth; or

2. For whom he is officially responsible.

(7) A travel voucher for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:

(a) Name; and

(b) Status or official relationship to the claimant's agency.

(8)(a) A travel voucher shall be submitted for:

1. One (1) major trip; or

2. One (1) month of travel.

(b) A travel voucher shall include the:

1. Social Security Number of the claimant; and

2. Purpose of each trip.

(c) If monthly expenses total less than ten (10) dollars, a travel voucher may include expenses for six (6) months of a fiscal year.

(9)(a) Preparation of travel voucher. A travel voucher shall be:

1. Typed; or

2. Legibly printed in ink.

(b) A receipt shall provide the following information for each expense:

1. Amount;

2. Date;

3. Location; and

4. Type.

(c) Receipts shall be stapled to the back of the travel voucher at the upper left corner.

(d) A travel voucher shall be forwarded to the cabinet with the expense voucher.

(e) If leave interrupts official travel, the dates of leave shall be stated on the travel voucher.

(10) Mileage.

(a) Mileage commuting between home and work station shall not be paid.

(b) If the point of origin is the claimant's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Work station and travel destination.

(c) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the expense voucher.

(d) Signatures. A travel voucher shall be signed and dated by the:

1. Claimant;

2. Claimant's supervisor; and

3. Agency head or his authorized representative.

Section 10. (1) Material incorporated by reference. The following material is incorporated by reference:

(a) "Travel Voucher" (DOA-34) (1992);

(b) "Request For Authorization Of Out-Of-Country Travel" (DOA-28(A)) (1992);

(c) "Purchase Order Authorization For Payment" (Form DOA-19) (1992);

(d) "Interaccount Bill" (DOA-7) (1992);

(e) "Contract For Rooms And Meals" (Form B120-16) (1992);
(f) "Interaccount Authorization (P1-1) (12/88), Department Of
Parks";
(g) "Request For Authorization Of Out-Of-State Travel"
(DOA-28) (1992);
(h) Transportation Cabinet's "Official Kentucky Mileage Map";
(i) "Rand McNally Road Atlas (1992)";
(j) "Travel Voucher Continuation (DOA-35) (1985)".
(2) This material may be inspected, obtained, or copied at the
Division of Accounts, Finance and Administration Cabinet,
Capitol Annex Building, Frankfort, KY 40601, 8 a.m. to 4:30 p.m.,
Monday through Friday.

JOSEPH W. PRATHER, Secretary

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:215. Nuclear pharmacy services.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191(1)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy shall be [is] responsible for imposing [to impose] minimum standards in all settings where drug products are dispensed and to ensure the safety of all drug products provided to the citizens of the Commonwealth. This administrative regulation applies to pharmacies as defined in KRS 315.010. The requirement of these administrative [rules-and] regulations are in addition to, and not in substitution of, other applicable administrative [rules-and] regulations promulgated by the Cabinet for Human Resources for radioactive materials and applicable administrative [rules-and] regulations promulgated by the Kentucky Board of Pharmacy.

Section 1. Definitions. (1) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

(2) "Radiopharmaceutical services" means those acts, services, operations and transactions necessary in the conduct, operation, management and control of a nuclear pharmacy, including, for example:

(a) The compounding, dispensing, labeling and delivery of radiopharmaceuticals;

(b) The participation in radiopharmaceutical utilization reviews; and

(c) The proper and safe storage and distribution of radiopharmaceuticals.

(3) "Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any of those drugs intended to be made radioactive. This includes nonradioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance, but does not include drugs which are carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

(4) "Radiopharmaceutical quality assurance" means the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, and it shall include, for example, internal test assessment, authentication of product history and the keeping of proper records.

(5) "Internal test assessment" means conducting those tests

necessary to insure the integrity of the test.

(6) "Authentication of product history" means identifying the purchase source, the ultimate use or disposition and any intermediate handling of any components of a radiopharmaceutical.

(7) "Authorized practitioner" means a practitioner duly authorized by applicable federal and state law to possess, use and administer radiopharmaceuticals. This person shall [must] be named on a radioactive materials license issued by the Radiation Control Branch of the Cabinet for Human Resources.

(8) "Designated agent" means an individual who shall be [is] under the direct supervision of an authorized practitioner and who shall be [is] authorized to communicate that practitioner's instructions to a nuclear pharmacy.

(9) "Nuclear pharmacist" means a pharmacist licensed to practice in the Commonwealth of Kentucky and who meets minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Radiation Control Branch of the Cabinet for Human Resources.

(10) "Direct supervision" means that the supervising nuclear pharmacist shall be physically present in the general area or location where the supportive personnel are performing supportive duties and shall conduct inprocess and final checks.

Section 2. General Requirements for Pharmacies Providing Radiopharmaceutical Services. (1) A license to operate a pharmacy providing radiopharmaceutical services shall only be issued to a pharmacy operating under the direct supervision of a nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of a nuclear pharmacist. A nuclear pharmacist shall be responsible for all operations of the licensed area and in personal attendance at all times that the pharmacy is open for business.

(2) Nuclear pharmacies may be exempted from the general space requirements for pharmacies, but shall:

(a) Have adequate space, commensurate with the scope of services required and meeting Radiation Control Branch, Cabinet for Human Resources, requirements established for all radioactive material licensees in the Commonwealth;

(b) Be separate from the pharmacy areas for nonradioactive drugs;

(c) Be inaccessible to all unauthorized personnel; and

(d) Have a radioactive storage and decay area.

(3) The process used for handling radioactive materials by any license holder shall [must] involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials as approved in a Kentucky radioactive materials license. In order to ensure the public health and safety in this respect, a nuclear pharmacy shall first meet the following general environmental requirements where the handling of radiopharmaceutical materials takes place:

(a) Proper ventilation so that radioactive materials cannot be airborne from that environment to other nonoccupationally unrestricted areas;

(b) Proper location so that the receipt and dispersal of radioactive materials do not result in inadvertent and undesired contamination of other nonoccupationally labeled areas; and

(c) Proper design to allow radioactive materials to be contained in given areas to ensure adequate safety and protection to personnel working in or near them and to ensure proper operation of the corresponding assay equipment.

(4) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with administrative [rules-and] regulations of the Radiation Control Branch of the Cabinet for Human Resources.

(5) A nuclear pharmacy, upon receiving an oral prescription for a radiopharmaceutical, shall immediately have the prescription reduced to writing or recorded in a data processing system, which writing or

record shall contain at least the following:

- (a) The name of the authorized user or his agent;
 - (b) The date of distribution and the time of administration of the radiopharmaceutical;
 - (c) The name of the procedure;
 - (d) The name of the radiopharmaceutical;
 - (e) The dose or quantity of the radiopharmaceutical;
 - (f) The serial number assigned to the order for the radiopharmaceutical;
 - (g) Any specific instructions; and
 - (h) The patient's name, whenever an order is for a therapeutic or blood-product radiopharmaceutical.
- (6) The immediate outer container **(shield)** of a radioactive drug to be dispensed shall be labeled with the:
- (a) Standard radiation symbol;
 - (b) Words, "Caution-Radioactive Material";
 - (c) Radionuclide;
 - (d) Chemical form;
 - (e) Amount of radioactive material contained in millicuries or microcuries;
 - (f) Volume in cubic centimeters, if a liquid;
 - (g) Requested calibration time for the radioactivity contained;
 - (h) Name, address, and telephone number of the nuclear pharmacy;
 - (i) Prescription number;
 - (j) Date; and
 - (k) Space for patient's name.
- (7) The immediate container shall be labeled with the:
- (a) Standard radiation symbol;
 - (b) Words, "Caution-Radioactive Material";
 - (c) ~~Name of the nuclear pharmacy;~~
 - (d) Prescription number; and
 - (e) **(d)** Name of the radiopharmaceutical.
- (8) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.
- (9) A nuclear pharmacist may transfer to authorized persons, in accordance with the provisions of a Kentucky radioactive materials license, radioactive materials not intended for drug use and radiopharmaceuticals intended for individual patient use.
- (10) Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies including those laws and regulations governing nonradioactive drugs. For nuclear pharmacies handling radiopharmaceuticals exclusively, the Kentucky Board of Pharmacy may waive regulations pertaining to pharmacy licenses for nonradiopharmaceuticals which requirements do not pertain to the practice of nuclear pharmacy.
- (11) Radioactive drugs are to be dispensed only upon a nonrefillable prescription order from a Radiation Control Branch, Cabinet for Human Resources, licensed medical practitioner (or the designated agent) authorized to possess, use and administer radiopharmaceuticals.
- (12) Prescription orders for delivery of radioactive drugs for use in the medical practice of a Radiation Control Branch, Cabinet for Human Resources, licensed medical practitioner may be placed on a telephone answering and recording device, only if the practitioner (or the designated agent) is identified in such a manner that is clearly recognized by the nuclear pharmacist dispensing the radioactive drug.
- (13)(a) A nuclear pharmacist in charge of a nuclear pharmacy shall have the authority to delegate to any qualified and properly trained person or persons, acting under his direct supervision, any nuclear pharmacy act which a reasonable and prudent nuclear pharmacist would find is within the scope of sound pharmaceutical judgment to delegate.
- (b) The delegation shall only occur if, in the professional opinion of the delegating nuclear pharmacist-in-charge, the act may be properly and safely performed by the person to whom the act is delegated.

(c) The delegated act shall only be performed in its customary manner and not in violation of other statutes.

(d) Persons to whom nuclear pharmacy acts are delegated shall not hold themselves out to the public as being authorized to practice pharmacy.

Section 3. Minimum Requirements for Space, Equipment, Supplies, and Library. (1) Each nuclear pharmacy must meet the following requirements for space:

(a) The area for the storage, compounding, and dispensing of radioactive drugs shall be completely separate from pharmacy areas for nonradioactive drugs;

(b) Hot lab and storage area shall be a minimum of 120 square feet; and

(c) The compounding and dispensing area shall be a minimum of 300 square feet.

(2) Each nuclear pharmacy shall be equipped with at least the following items of equipment:

(a) Dose calibrator;

(b) Refrigerator;

(c) Drawing station;

(d) Well scintillation counter;

(e) Microscope;

(f) Chromatographic apparatus or comparable means of effectively assuring tagging efficiency;

(g) Portable radiation survey meter; and

(h) Other equipment deemed necessary for radiopharmaceutical quality assurance for products compounded or dispensed as shall be determined by the Radiation Control Branch, Cabinet for Human Resources, and the Kentucky Board of Pharmacy.

(3) Each nuclear pharmacy shall have on the premises current editions or revisions of the following reference materials:

(a) United States Pharmacopoeia-National Formulary with supplements;

(b) State statutes and regulations relating to pharmacy;

(c) State and federal regulations governing the use of applicable radioactive materials; and

(d) Text relating to the practice of nuclear pharmacy and radiation safety.

Section 4. Radiopharmaceutical Quality Assurance. The holder of a nuclear pharmacy license shall be responsible for the radiopharmaceutical quality assurance of all radiopharmaceuticals, including biologicals, dispensed or manufactured.

TOM M. HOUCHEMS, President

APPROVED BY AGENCY: October 14, 1992

FILED WITH LRC: October 29, 1992 at 8 a.m.

STATE INTERAGENCY COUNCIL FOR SERVICES TO CHILDREN WITH AN EMOTIONAL DISABILITY (As Amended)

202 KAR 1:010. Uniform grievance procedure for children with an emotional disability.

RELATES TO: KRS 200.505

STATUTORY AUTHORITY: KRS 200.505

NECESSITY AND FUNCTION: This **administrative** regulation defines the "uniform grievance procedure" to be used by the Regional Interagency Councils for Children with an Emotional Disability and the State Interagency Council for Services to Children with an Emotional Disability.

Section 1. Definitions. (1) "Appeal" means a formal request to SIAC to review the disposition of a grievance by a RIAC.

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(2) "Complainant" means any of the following persons who may initiate a grievance with the RIAC:

- (a) A nominated child age sixteen (16) or older;
- (b) A nominated child's parent; or
- (c) An adult who has been authorized in writing as a representative for the purposes of initiating a grievance by one (1) of the persons listed above or by a nominated child under the age of sixteen (16).

(3) "Grievance" means a formal request for reconsideration of a decision made by an interagency service planning team or a RIAC.

(4) "IFBSS" means Individualized Family Based Support Services.

(5) "Local resource coordinator" means chief staff person to the RIAC.

(6) "Nominated child" means a child who has been nominated for or who is receiving services under the auspices of a RIAC.

(7) "Parent" means the natural parent, adoptive parent, legal guardian, or other person exercising custodial control or supervision, including relatives and foster parents, with whom the child was living when the event over which the grievance is filed occurred.

(8) "RIAC" means Regional Interagency Council for Services to Children with an Emotional Disability.

(9) "SIAC" means State Interagency Council for Services to Children with an Emotional Disability.

Section 2. Grievance Notification Procedure. (1) A grievance may be filed by a complainant with a RIAC grievance form in the following circumstances:

- (a) A RIAC refers, defers, or denies a nomination;
 - (b) The parent or nominated child over age sixteen (16) expresses disagreement with the interagency service plan; or
 - (c) A RIAC denies or reduces an allocation of IFBSS to the nominated child and family.
- (2) The local resource coordinator shall ensure that:
- (a) Adverse decisions of the RIAC are reviewed with parents of the nominated child;
 - (b) Parents of the nominated child are notified of the grievance procedure if they disagree with the decision of the RIAC;
 - (c) Attempts are made to informally resolve the grievance if appropriate;
 - (d) Assistance is provided to a complainant who requests it with initiating the grievance procedure; and
 - (e) The notification process is documented.
- (3) Services to the nominated child and family shall continue while the grievance is pending. If the grievance concerns a reduction of IFBSS, the allocation of IFBSS shall be restored pending resolution of the grievance.

Section 3. Types of Grievances. The following are the two (2) types of grievances which may be filed with the RIAC.

(1) Grievances relating to the interagency service plan over which the RIAC has complete control.

(a) These grievances may be initiated regarding any matter relating to the interagency service plan created for a nominated child. However, grievances regarding aspects of a service plan over which one (1) of the agencies represented on the RIAC has complete control shall be initiated with that agency using that agency's grievance procedure.

(b) The service coordinator shall assist the complainant in reviewing the appropriate agency's grievance procedure and include a referral to the appropriate representative.

(2) Grievances regarding a decision by a RIAC to deny or reduce services to a nominated child and family. Grievances may be initiated regarding the following decisions of a RIAC:

- (a) To defer, refer, or deny a nominated child for service coordination; or
- (b) To reduce or deny IFBSS-funded services recommended for a nominated child and family by an interagency service planning

team.

Section 4. Forms for Grievances. (1) Grievances may be initiated by using the standard form ("RIAC Grievance") or another written notice that includes the following information:

(a) The type of grievance ("interagency service plan" or "RIAC denial of services");

(b) A brief summary of the situation that has led to the grievance, including dates and personnel involved if possible;

(c) The signature of the person initiating the grievance;

(d) The relationship to the nominated child of the person who is initiating the grievance; and

(e) The date the grievance is signed.

(2) The written grievance shall be delivered or sent by first class mail to the chair of the RIAC. The grievance shall be marked with the date of receipt.

(3) A copy of the standard grievance form is incorporated by reference and may be inspected and obtained through the Chair, State Interagency Council for Services to Children with Emotional Disabilities, Department for Mental Health and Mental Retardation Services, 275 E. Main St., Frankfort, KY 40621, **Monday through Friday, 8 a.m. to 4:30 p.m.**

Section 5. Inquiries Into Grievances. (1) Within two (2) weeks of receipt of a grievance, the chair of the RIAC shall appoint an individual to make an inquiry into the grievance. The person appointed for the inquiry may be a member of an agency which currently serves the child and family, but shall not have been involved in the formulation of the plan or the decision which the grievance concerns, or was involved with the direct supervision or delivery of services to the family.

(2) The inquiry shall include:

(a) A telephone or personal interview with the complainant; (b) Telephone or personal interviews with the persons involved in decisions about the grievance and others with knowledge of the circumstances of the decision; and

(c) A review of documents which are associated with the grievance.

(3) The inquiry process may include negotiation of a proposed settlement of the grievance.

(4) At the conclusion of the inquiry, the person who made the inquiry shall request the chair of the RIAC to place the grievance on the agenda of the next regularly scheduled RIAC meeting.

(5) The inquiry shall last no longer than two (2) weeks from the date of receipt of the grievance by the RIAC chair.

(6) The complainant shall be informed of the recommendation of the person who made the inquiry when the request is made to place the grievance on the agenda of the RIAC.

Section 6. Consideration of the Grievance by the RIAC. (1) When the person appointed to conduct the inquiry advises the chair of the RIAC that the inquiry process has been completed, the chair of the RIAC shall schedule a presentation of the grievance and inquiry findings at the next regularly scheduled meeting of the RIAC, but no later than one (1) month following the conclusion of the inquiry.

(2) The following persons shall be invited to appear at the presentation:

(a) The person who conducted the inquiry;

(b) **Those persons identified by the individual appointed to conduct the inquiry who may** ~~Persons that the individual that conducted the inquiry believes can~~ provide information that would be helpful in the reconsideration of the issue by the RIAC, or who may be affected by a reconsideration of the initial decision;

(c) The complainant and any authorized representative; and

(d) Persons whom the complainant wishes to be in attendance.

(3) At the meeting of the RIAC, a presentation shall be made by the persons attending regarding the grievance in the order listed

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above. The chair of the RIAC may set and enforce uniform time limits for presentations. If the complainant is absent from the presentation, the chair of the RIAC may postpone the presentation until no later than the next regularly scheduled meeting.

(4) At the conclusion of the presentation, the person who conducted the inquiry shall make recommendations to the RIAC regarding resolution of the grievance.

(5) If a settlement to the grievance is negotiated during the inquiry, only the person who conducted the inquiry and the complainant shall appear to report the settlement to the RIAC.

(6) All presentations to the RIAC regarding grievances, and discussion by the RIAC of the disposition, shall be audiotaped. Prior to the meeting, all parties to the grievance shall be advised that presentations and discussions will be audiotaped.

Section 7. Disposition of Grievances by the RIAC. (1) At the conclusion of the presentation, the RIAC shall vote to go into executive session to consider the grievance and then in open session make one (1) of the following decisions:

(a) The grievance is not one which the RIAC can resolve because it concerns a matter over which an agency represented on the RIAC has complete control. In this case, the chair may request the RIAC representative of that agency to assist in the resolution of the grievance;

(b) The original interagency service plan or RIAC decision stands;

(c) The previous decision to defer, refer, or deny the nomination of a child is set aside, and the child is accepted for service coordination;

(d) A new interagency service planning meeting shall be conducted, using new instructions or recommendations from the RIAC; or

(e) The previous denial or reduction of services by the RIAC is set aside, and new levels of service are established.

(2) The decision of the RIAC shall be summarized in a letter to the complainant, with copies to the authorized representative, if any, and the local resource coordinator. The letter shall be sent within two (2) weeks of the presentation of the grievance to the RIAC. The letter shall include information as to how the decision of the RIAC may be appealed to SIAC.

Section 8. Appeals to SIAC. The disposition of a grievance by a RIAC may be appealed to the SIAC.

(1) An appeal to the SIAC ~~shall be [ie]~~ made in writing to the State Coordinator of Kentucky IMPACT, c/o Department for Mental Health and Mental Retardation Services, 275 E. Main St., Frankfort, KY 40621. A copy of the disposition letter from the RIAC chair shall be attached.

(2) The appeal to SIAC shall be initiated within two (2) weeks of the date of the letter from the RIAC chair about the disposition of the appeal.

(3) The appeal to SIAC shall only be initiated by the person who initiated the grievance with the RIAC or by the authorized representative.

(4) Upon receipt of a letter appealing the RIAC disposition of a grievance, the state coordinator shall consult with the chair of the SIAC regarding the method for addressing the SIAC appeal.

(5) In all appeals of grievances to the SIAC, the SIAC chair shall appoint a SIAC member, a designee of a SIAC member, or staff to the SIAC to review documentation of the RIAC's disposition of the grievance and recommend a resolution of the appeal to a future meeting of the SIAC.

(6) If no recommendation for a resolution based on documentation can be made, the chair of the SIAC shall determine a method for further investigation and recommendation regarding the appeal including the following ~~[-but not limited to-]~~:

(a) The SIAC chair may appoint a SIAC member, designee of a SIAC member, or staff to the SIAC to make a personal inquiry into the grievance and make a recommendation to SIAC regarding resolution

of the appeal; or

(b) The SIAC may hear a presentation by the RIAC and the complainant in a format established by the SIAC chair.

(7) [(6)] The investigation and recommendation regarding the appeal to SIAC shall be completed within thirty (30) days of the receipt of the appeal.

Section 9. Disposition of Appeals by SIAC. (1) The SIAC shall be informed of all appeals, the methods chosen to address them, and the resolutions recommended for them. The SIAC may choose to resolve appeals in one (1) of the following ways:

(a) Recommend further inquiry or reconsideration by the RIAC;

(b) Permit the disposition by the RIAC of the grievance to stand as made; or

(c) Advise the RIAC to change the disposition of the grievance. If the RIAC is advised to change its disposition, the SIAC shall make recommendations and offer on-site technical assistance to the RIAC.

(2) The SIAC chair shall inform the complainant of the SIAC's disposition of the appeal by letter. Copies shall be sent to the complainant's authorized representative, if any; to the RIAC chair; and to the local resource coordinator.

DENNIS D. BOYD, CHAIR

APPROVED BY AGENCY: November 12, 1992

FILED WITH LRC: November 13, 1992 at 11 a.m.

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:020. Definitions.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: To provide adequate information and guidance on the housing of Class D felons in county jails.

Section 1. Definitions. ~~[As used in this document, the following definitions shall apply:]~~

(1) "Assessment/classification center (A/C center)", see CPP 17.3.

(2) "Class D felon" means an inmate convicted of a Class D felony with an indeterminate sentence of five (5) years or less which is not a sexual offense enumerated in KRS 197.410(1) and who was sentenced after July 13, 1992.

(3) "Classification branch manager", see CPP 18.6.

(4) "Community center program manager", see CPP 25.6.

(5) "Educational good time", see CPP 15.3 and CPP 20.1.

(6) "Escape", see KRS 520.010.

(7) "Forfeited good time", see CPP 25.6.

(8) "Furlough", see CPP 25.4.

(9) "Jail", see KRS 441.005(1).

(10) "Meritorious good time", see CPP 25.6.

(11) "Minimum custody", see CPP 18.5.

(12) "Medium custody", see CPP 18.5.

(13) "Statutory good time", see CPP 25.6.

(14) "Waiver" means that a county is exempt under KRS 532.100 from housing any Class D felons.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

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JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:030. Administration. [Purpose,]

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation sets forth the purpose of this program and the division responsible for the administration of the program.

Section 1. Purpose. ~~[(1) The overall thrust of the program is the diversion of Class D felons from the state prison system.~~

~~(2) These inmates shall serve their felony sentences in county jails unless the county has received a waiver from the department.~~

~~(3)] This program shall be administered by the Division of Local Facilities.~~

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:040. Waivers.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide the process for counties to request waivers from the department for housing Class D felons in county jails.

Section 1: Request for Waivers; Effect of Waivers. (1) ~~[Counties which do not want to house Class D felons shall request a waiver in writing from the commissioner of the department who shall automatically grant the waiver.~~

~~(2)] The waiver request shall be signed by both the county judge executive and jailer.~~

~~(2) [(3)] The waiver shall remain in effect until the county notifies the department in writing to terminate the waiver.~~

Section 2. Controlled Intake. (1) Class D felons in these counties with waivers shall be considered controlled intake inmates and be processed through the A/C center in accordance with CPP 17.3.

(2) Upon transfer to the A/C center, Class D felons convicted in counties granted waivers shall have their names placed on a waiting list for placement in another jail by the community center program manager.

(3) The only exceptions shall be inmates who entered into plea agreements with the courts in order to serve their sentence in the county jail. These inmates shall serve their sentences in the county jail and shall be processed in accordance with procedures outlined in 501 KAR 2:060. The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons when space is available.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:060. Procedures for housing of Class D felons.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide procedures for the housing of Class D felons in county jails.

Section 1. Submission of Documents. In county jails housing Class D felons, the jailer shall forward to the A/C center the following documents within ten (10) working days of receipt of the judgment on all Class D felons for whom a transfer has not been requested:

- (1) Pictures with negative;
- (2) Fingerprints;
- (3) Detainers;
- (4) Incident and disciplinary reports; and
- (5) Body I.D. sheet.

Section 2. Custody Assignment. (1) The A/C center staff shall, within ten (10) working days of receipt of the documents, review the inmate file and assign a custody to the Class D felon.

(2) The inmate file shall be forwarded to Offender Records Section, Central Office, which shall audit the file within five (5) working days of receipt.

(3) The section shall forward the file to the Director of Local Facilities who shall notify the jailer of the custody assignment.

(4) If the custody assigned is minimum or community, the Class D felon may participate in programs offered outside the jail in accordance with the following terms: community service work program under the direct supervision of an assigned individual who shall complete any training programs specified by the department.

(5) If the custody assigned is medium, the Class D felon shall not be released from the jail.

Section 3. Preparole Progress Reports. Probation and parole staff assigned to work with the county jail shall prepare parole progress reports on Class D felons as outlined in CPP 18.10.

Section 4. Transportation. Jail staff shall be responsible for the transportation of Class D felons except as specified in KRS 431.215 and 441.510.

Section 5. Release Procedures. (1) The release of Class D felons shall follow the procedure outlined in CPP 25.6.

(2) Jail staff shall not release a Class D felon to another state or to federal authorities without advance notice to the Director of Local Facilities.

(3) Jail staff shall notify the Director of Local Facilities or the A/C center of any detainers or holds lodged against the Class D felon by another jurisdiction.

(4) A ~~[Ne]~~ Class D felon shall not be released to the custody of another state or to federal authorities without approval from the Department of Corrections or the Office of the Governor.

Section 6. Furlough Program. (1) The authority and responsibility of monitoring and granting furloughs shall be the responsibility of the community center program manager.

(2) Eligibility for furloughs shall be determined pursuant to KRS 197.140 and the following [as follows]:

- (a) Furloughs of Class D felons shall be a privilege, not a right.
- (b) Class D felons who are minimum custody shall be eligible to be considered for a forty-eight (48) hour furlough each quarter not to exceed eight (8) furlough days each calendar year. There shall be a

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minimum of sixty (60) days between furloughs.

(c) Class D felons who are community custody shall be eligible to be considered for a forty-eight (48) hour furlough every thirty (30) days after their initial furlough.

(d) All Class D felons shall have spent at least sixty (60) days in the county jail since the date of the custody assignment prior to being considered for a furlough.

(e) ~~[No]~~ Class D felons on whom a felony detainer has been received shall **not** be eligible for a furlough.

(f) Class D felons receiving more than a one (1) month deferment at a Parole Board hearing shall wait an additional thirty (30) days from the date of the deferment before being eligible for a furlough.

(g) Inmates and their families shall show evidence of an ability and willingness to pay all expenses while on furlough.

(h) Inmates shall indicate their destination and means of transportation on their application.

(i) Overnight furloughs shall be allowed to verified family members only.

(j) Any requested exceptions shall have the community center program manager's approval and shall be presented with specific written justification. Applications shall follow procedures outlined in CPP 25.6.

Section 7. Escape. Escape procedures to be followed are cited in CPP 25.6.

Section 8. Medical Needs. Medical needs of Class D felons shall follow the procedures cited in CPP 25.6.

Section 9. Work Projects. Utilization of Class D felons for work projects shall follow the procedures cited in CPP 25.6.

Section 10. Good Time. Statutory and meritorious good time shall follow procedures outlined in CPP 25.6.

Section 11. Monthly Reports. Monthly reports shall follow procedures outlined in CPP 25.6.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 19, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

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

601 KAR 1:025. Transporting hazardous materials; permit by air or highway.

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous materials by air or highway. KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by administrative regulation, to be paid by applicants for a general permit to transport radioactive

materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) Title 49, Code of Federal Regulations, Part 171 effective October 1, 1992 ~~[February 28, 1991]~~. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(2) Title 49, Code of Federal Regulations, Part 172 effective October 1, 1992 ~~[December 31, 1990]~~. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(3) Title 49, Code of Federal Regulations, Part 173 effective October 1, 1992. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging. ~~The requirements in this federal regulation for the transportation of hazardous materials by waterway, railway or pipeline are beyond the scope of this administrative regulation~~;

(4) ~~[(3)]~~ Title 49, Code of Federal Regulations, Part 175 effective July 1, 1992 ~~[December 31, 1990]~~. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(5) ~~[(4)]~~ Title 49, Code of Federal Regulations, Part 177, effective October 1, 1992 ~~[December 31, 1990]~~. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways; ~~and~~

(6) ~~[(6)]~~ Title 49, Code of Federal Regulations, Part 178 effective October 1, 1992 ~~[December 31, 1990]~~. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; ~~and~~ ~~[.]~~

(7) ~~[(6)]~~ Title 49, Code of Federal Regulations, Part 180, effective October 1, 1992 ~~[December 31, 1990]~~. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

~~[Section 2. (1) Title 49, Code of Federal Regulations, Part 173 effective February 28, 1991 is incorporated by reference but only as it is applicable to the shipment of hazardous materials by air or highway. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging.~~

~~(2) The material published in Volume 56, Number 246, pages 52401 through 52729 of the "Federal Register" dated December 21, 1990 is incorporated by reference. This material will amend 49 CFR Parts 171, 172, 173, 175, 177 and 178 effective October 1, 1991. However, since January 1, 1991 compliance with the changes has been authorized by U.S. Department of Transportation. Therefore, the Kentucky Transportation Cabinet authorizes compliance with this material.~~

~~(3) The material published in Volume 56, Number 2, pages 197 through 201 of the "Federal Register" dated January 3, 1991 is incorporated by reference. This material will amend 49 CFR Parts 172 and 173 effective September 30, 1991. However, since January 3, 1991 compliance with the changes has been authorized by U.S.~~

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Department of Transportation. Therefore, the Kentucky Transportation Cabinet authorizes compliance with this material.

(4) This material incorporated by reference is available for public inspection and copying in the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, Frankfort, Kentucky 40622. Office hours are from 8 a.m. to 4:30 p.m., local prevailing time on Monday through Friday.]

Section 2. [3.] (1) Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of this permit, shall pay to the Transportation Cabinet a fee of twenty-five (25) dollars.

(2) The applicant for a general permit shall submit his application to the Department of Vehicle Regulation in the form prescribed in subsection (3) of this section by the department. The department shall make the forms available to any applicant.

(3) The front page of the form shall read as follows:

TC 95-1

Kentucky Transportation Cabinet
Department of Vehicle Regulation
Division of Motor Carriers
P. O. Box 307
Frankfort, Kentucky 40602

Application For Permit For The Transportation of Hazardous Materials And/Or Radioactive Materials (This application shall be accompanied by a \$25 filing fee)

CARRIER NAME:

STREET:

CITY:

STATE:

ZIP:

1. Type of Carrier: Private: For-Hire:

2. Classification of Hazardous or Radioactive Materials Transported:

INTERSTATE
Radioactive Material
Radioactive Waste

INTRASTATE
Hazardous Material
Hazardous Waste
Radioactive Material
Radioactive Waste

3. Individual associated with carrier who is designated to be contacted in event of emergency:

NAME:

PHONE NUMBERS:

During Business Hours ()

After Business Hours ()

TITLE:

ADDRESS (if different from above):

4. Description of emergency procedures which the carriers shall follow in the event of an emergency:

I, the undersigned official of the above company, state that the above information is true and correct.

NAME _____ OFFICIAL TITLE _____

(4) The back page of the form shall inform the applicant of the basic requirements for application for a permit and shall contain the following:

TC 95-1

GENERAL INFORMATION REGARDING KENTUCKY'S HAZARDOUS/RADIOACTIVE MATERIAL Transportation Permit

The following information generally outlines the regulations of the Division of Motor Carrier's hazardous radioactive materials transportation requirements. If you have specific questions, contact the Division of Motor Carriers at the address or the telephone number below.

A general permit may be issued to any carrier who transports radioactive materials, either interstate or intrastate, and any carrier who transports hazardous materials intrastate in Kentucky. Needed definition follow:

"CARRIER" means a person engaged in the commercial transportation of passenger or property by land as a common, contract or private carrier or civil aircraft; except for those transporting passengers or property by pipelines, railways, or waterways.

"HAZARDOUS MATERIAL" means a substance designed as hazardous by the *Federal Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.) or the federal regulations adopted pursuant thereto.

Exception: Hazardous material shall not include agricultural wastes, coal mining wastes, utility waste (fly ash, bottom ash, scrubber sludge) sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

"RADIOACTIVE MATERIAL" means any material or combination of materials which spontaneously emit ionizing radiation.

The provisions of this permit do not apply to hazardous materials shipped by or for the U.S. government for military or national security purposes.

Vehicles used in the transportation of fuels to end users are also exempt from these requirements.

TO OBTAIN THIS PERMIT, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

(1) Complete and return the application (TC 95-1) to the Kentucky Transportation Cabinet, Division of Motor Carriers, with the required \$25 yearly fee. A COPY OF THIS APPLICATION IS ON THE REVERSE SIDE.

(2) Applicant shall have on file with the Division an approved certificate of public liability and property damage insurance in the minimum amounts set forth in KRS 281.655.

These minimum limits are:

(a) Petroleum or Petroleum Products Less than 10,000 lbs. - \$100,000/300,000/50,000

(b) All other hazardous/radioactive material as defined in KRS 174.405 - \$100,000 SINGLE LIMIT COVERAGE

*The cabinet has adopted, by reference, the federal hazardous materials transportation regulations, 49 CFR (1978), as amended, in their entirety. Those parts pertaining to railways, pipeline and waterways are specifically excluded.

The cabinet may issue a permit based upon the information contained in the application. A COPY OF THIS PERMIT SHALL BE CARRIED IN THE TRANSPORTING VEHICLE WHILE IN THE COMMONWEALTH OF KENTUCKY. Each carrier shall be assigned only one permit, and you are given permission to photostat a copy for each vehicle operating under your authority and your permit. The general permit shall be renewed annually.

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This permit does not preclude or encompass any other document required by Kentucky law. A carrier shall comply with all other applicable requirements for the transportation of hazardous materials within the Commonwealth.

PLEASE ADDRESS ALL MAIL TO:

KENTUCKY DEPARTMENT OF VEHICLE REGULATION
DIVISION OF MOTOR CARRIERS
QUALIFICATIONS/PERMITS BRANCH
POST OFFICE BOX 2007
FRANKFORT, KENTUCKY 40602
Phone: (502) 564-4540

NORRIS BECKLEY, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 16, 1992

FILED WITH LRC: October 23, 1992 at 3 p.m.

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

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1993 for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) Until March 31, 1993, a commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

(a) Operates exclusively in intrastate commerce; and

(b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, adopted in 601 KAR 1:005.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form ~~from~~ TC 94-38, "Request for Medical Waiver" effective January, 1991. This form is incorporated by reference as a part of this administrative regulation.

(3)(a) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been ~~be~~ completed by a health care professional as delineated ~~defined~~ in 49 CFR Part 390.5 and adopted in 601 KAR 1:005 ~~[licensed doctor of medicine or osteopathy]~~.

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(d)1. A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver.

2. The vision conditions form may be completed by a licensed doctor of optometry.

(e) The following supplemental medical report forms each with an edition date of December 1990, shall be incorporated by reference as a part of this administrative regulation:

1. "Cardiovascular Conditions";
2. "Neurological Conditions";
3. "Musculoskeletal Conditions";
4. "Metabolic Conditions";
5. "Alcohol or Other Drug Dependence";
6. "Mental and Emotional Conditions"; and
7. "Vision Conditions".

(f) The licensed doctor of medicine or osteopathy shall determine which ones of these supplemental medical report forms are applicable to the medical waiver applicant.

(4) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(5) A copy of the forms incorporated by reference may be obtained, inspected or copied at the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person, 8 a.m. to 4:30 p.m. Eastern time, Monday through Friday.

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the ~~[driving history record of the]~~ following:

- (a) Driving history record of the applicant;
- (b) Original medical examination form; and
- (c) Supplemental medical report form;

(d) A skills test if suggested by the Medical Review Board, the applicant if his medical problem is exoskeletal or visual, or the provisions of this administrative regulation; and

(e) Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Paraplegics or quadriplegics.

1. If the applicant has a loss or impairment of foot, leg, arm, hand or fingers, he shall not be issued a medical waiver unless he passes a skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.

2. If a waiver is issued, it shall be vehicle specific.

3. If the applicant makes any adjustments to the specially adapted commercial vehicle or acquires a different commercial vehicle, it shall be approved by the Division of Driver Licensing prior to operation by the person with the medical waiver.

(b) Vision. To be considered for a medical waiver, the commercial driver shall:

1. Have a distance visual acuity of 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;

2. Have visual fields which are not narrowed to less than 110 degrees of total visual field;

3. Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;

4. Not wear bioptic lenses; and

5. Not have uncorrectable double vision.

(c) Hearing. A waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. A commercial driver with epilepsy or other condition which may cause loss of consciousness shall:

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1. Have been seizure free for one (1) year prior to requesting the waiver;
2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and

3. Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular.

1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:

a. A fainting or blackout spell;

b. Uncontrollable attacks of choking, suffocation, or shortness of breath; or [and]

c. Uncontrollable instances of syncope or vertigo.

2. A commercial driver shall not have heart disease symptoms while:

a. Operating a motor vehicle; or

b. Sitting at rest.

3. A commercial driver shall not have:

a. Difficulty in breathing;

b. Painful breathing; or

c. An aortic or ventricular aneurysm.

4. A commercial driver's:

a. Blood pressure shall not be irregular; or

b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.

(f) Diabetes. A commercial driver shall not have:

1. An uncontrolled condition of diabetes; or

2. In the year immediately preceding a waiver request, had an instance of diabetes shock or coma.

(g) Alcohol or drugs. A commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. A commercial driver shall:

1. Not exhibit homicidal, suicidal, or destructive behavior;

2. In the year immediately preceding a waiver request, not have experienced bouts of:

a. Extreme anxiety;

b. Depression;

c. Paranoia;

d. Confusion;

e. Delusions; or

f. Hallucinations.

3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition.

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1993, he shall submit to medical reexaminations required by the Division of Driver Licensing.

(2) After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:

(a) The condition for which a waiver was issued has not worsened; and

(b) An additional nonqualifying condition has not manifested.

(3)(a) The driving history record of a commercial driver approved for a medical waiver may be evaluated by the Division of Driver Licensing:

1. At any time; and

2. At least once a year.

(b) If a review of the person's driving history record would cause the person to ordinarily be referred to the Medical Review Board under the provisions of 601 KAR 13:010, the waiver or waiver request shall be referred to the Medical Review Board for evaluation.

(4)(a) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit to the Division of Driver Licensing:

1. The test results; and

2. Recommendations for waiver refusal or restrictions on a medical waiver.

(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:

(a) Submit to a periodic report requested by the Division of Driver Licensing; or

(b) Report for a skills test.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver's:

(a) Physical or mental condition; or

(b) Employment or employment conditions.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to the:

(a) Commercial driver; and

(b) Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be referred to the Medical Review Board under the provisions of 601 KAR 13:010.

Section 6. Waiver Cancellation. If at any time after the issuance of a medical waiver, the Division of Driver Licensing cancels the waiver pursuant to the provisions of this administrative regulation, the driver's commercial driver's license shall also be cancelled.

NORRIS BECKLEY, Commissioner

DON C. KELLY, Secretary

APPROVED BY AGENCY: October 26, 1992

FILED WITH LRC: October 28, 1992 at 10 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
Office of Teacher Education and Certification
(As Amended)

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)(a) 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:

1. [(a)] The Associate Commissioner of the Office of Teacher Education and Certification;

2. [(b)] The Director of the Division of Teacher Certification; and

3. [(c)] A certified teacher appointed by the board.

(b) 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.

(c) 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.

(d) 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. [4-] 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

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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 five (5) ~~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. ~~[6-]~~ 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 be 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. Copies of the subpoena forms shall be mailed to the certificate holder with the Statement of Charges and Notice of Hearing. ~~[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]~~ for 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 7. ~~[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.]~~

(2)(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) [(e)] 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)-(f)] 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 8. ~~[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 9. ~~[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 10. ~~[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 ~~[either]~~ 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 11. ~~[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 12. ~~[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.

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Section 13. ~~[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 14. ~~[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 15. ~~[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

WORKERS' COMPENSATION BOARD Department of Workers' Claims (As Amended)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260

NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to ~~[such]~~ charges that ~~[as]~~ are fair, current, and reasonable for similar treatment of injured persons of a like standard of living in the same community and where ~~[such]~~ treatment is paid for by the injured person himself. The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this administrative regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty

center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based physician" means any physician ~~[person]~~ whose fees for services are billed by the hospital.

(3) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this administrative regulation which are billed to payors other than pursuant to this administrative regulation on a global basis.

(4) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(5) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of November 30 of each calendar year. The calculation for cost shall be the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of fifteen (15) percentile.

(3) ~~[In no event shall]~~ A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile ~~[If a hospital's cost-to-charge ratio]~~, including the fifteen (15) percentile addition, except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Human Resources, Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed 100 percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio. ~~[does exceed eighty-five (85) percentile, it shall be reduced to eighty-five (85) percentile.]~~

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Workers' Compensation Board.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Kentucky Workers' Compensation Board shall calculate and publish each hospital's adjusted cost-to-charge ratio on or before February 1 of each calendar year [an annual basis]. A new hospital shall be assigned a base cost-to-charge ratio of eighty-three (83) percentile until it has been in operation for one (1) full fiscal year.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Workers' Compensation Board pursuant to this administrative regulation.

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Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky will be deemed to have agreed to be subject to the provisions of this **administrative** regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this **administrative** regulation shall be submitted on a uniform billing form (UB-82) or the successor to this [such] form prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached ~~[-All bills shall include a statement of services which clearly and concisely sets forth the nature or type of service rendered]~~. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any hospital-based physician [practitioner] providing only the professional component shall bill for and be paid the professional component only. A hospital-based physician [practitioner] billing for the professional component shall submit the bill to the insurer on the HCFA 1500, or successor to this [such] form approved by the Commissioner of Insurance with the Kentucky Workers' Compensation Medical Provider's Certification attached ~~[Workers' Compensation Board SMS 1 (Statement for Medical Services)]~~.

(3) All workers' compensation medical payment obligors administering or paying bills subject to this **administrative** regulation shall be required to audit the bills to ensure compliance with this **administrative** regulation.

(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the Workers' Compensation Board setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) A hospital-based practitioner shall use the HCFA 1500 or UB-82, or successor forms prescribed by the Commissioner of Insurance ~~[Workers' Compensation Board SMS 1 (Statement for Medical Services)]~~ when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule adopted pursuant to 803 KAR 25:090.

(3) Any physicians **or other provider** performing services which are regulated pursuant to 803 KAR 25:090 (Kentucky medical fee schedule) in a hospital as defined in Section 1 of this **administrative** regulation shall bill for services rendered pursuant to 803 KAR 25:090 only.

(4) Kentucky law requires the employer (or insurer) to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for medical treatment under KRS 342.020. This shall [does] not prohibit the hospital from billing the employee for

items or services not provided for under the Kentucky Workers' Compensation Act.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

Section 10. Kentucky Workers' Compensation Medical Provider's Certification. All bills submitted by a hospital or hospital-based physician pursuant to this **administrative** regulation shall be accompanied by a "Kentucky Workers' Compensation Medical Provider's Certification."

KENTUCKY WORKER'S COMPENSATION MEDICAL PROVIDER'S CERTIFICATION

(1) The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82, or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies, or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work-related injury or occupational disease.

Medical Provider _____ Date _____

(2) This certificate may be executed on behalf of the hospital or hospital-based physician by an employee or agent who is also authorized to execute billing forms UB-82 or HCFA 1500 for that provider.

(3) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers, or their agents may furnish reasonable grounds for the belief that the medical services, supplies, or appliances were reasonably required for a work-related injury or occupational disease.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: November 5, 1992

FILED WITH LRC: November 5, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (As Amended)

806 KAR 17:081. Minimum standards for long-term care insurance policies.

RELATES TO: KRS 304.12-020, 304.14-600 to 304.14-625, 304.18-110, 304.18-120, 304.18-127, 304.29-600, 304.32-290, 304.38-220

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-620, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable **administrative** regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-620 requires the Commissioner of Insurance to make administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 provides that the Commissioner of Insurance may promulgate reasonable **administrative** regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable **administrative** regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This **administrative** regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions. ~~[As used in this regulation:]~~

- (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;
- (2) "Insurer" means insurer, fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization; and
- (3) "Compensation" as referred to in Section 22 of this administrative regulation means [includes] pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of long-term care insurance policies or certificates, such as bonuses, gifts, prizes, awards, and finders' fees.

~~[Section 2. Purpose; Scope. (1) The purpose of this administrative regulation is to implement KRS 304.14-600 to 304.14-625, 304.29-600, 304.32-200, and 304.38-220 to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.~~

~~(2) This administrative regulation applies to all long-term care insurance policies delivered or issued for delivery in Kentucky on or after the effective date of this administrative regulation.]~~

Section 2. ~~[3-]~~ Policy Definitions. Long-term care insurance policies delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy and the definitions satisfy the following requirements:

- (1) "Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.
- (2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his health status.
- (3) "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.
- (4) "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
- (5) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
- (6) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring, and toileting).
- (7) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.
- (8) All providers of services, such as "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 3. ~~[4-]~~ Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) ~~[No]~~ Long-term care insurance policies ~~[policy]~~ issued to an individuals shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

- (a) Preexisting conditions or diseases;
- (b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's d-isease;
- (c) Alcoholism and drug addiction;
- (d) Illness, treatment, or medical condition arising out of:
 1. War or act of war (whether declared or undeclared);
 2. Participation in a felony, riot, or insurrection;
 3. Service in the armed forces or ~~[units]~~ auxiliary units ~~[therete]~~;
 4. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 5. Aviation (this exclusion applies only to nonfare-paying passengers).
- (e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

(f) The requirements of this subsection are [is] not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Extension of benefits.

(a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance policies shall provide for continuation and conversion as required by KRS 304.18-110 and 304.18-120.

(5) Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination in accordance with KRS 304.18-127.

(6) The premiums charged to an insured for long-term care insurance shall not increase due to either:

- (a) The increasing age of the insured at ages beyond sixty-five (65); or

(b) The duration the insured has been covered under the policy.

Section 4. [6:] Required Disclosure Provisions. (1) Renewability.

(a) Individual long-term care insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;

2. ~~[-shall]~~ Appear on the first page of the policy; and

3. ~~[shall clearly]~~ State the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(c) This **subsection [provision]** shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, ~~[all]~~ riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, ~~a~~ **[any]** rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term ~~shall~~ **[must]** be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences.

(a) ~~[With regard to life insurance policies which provide an accelerated benefit for long-term care,]~~ A disclosure statement **shall be [is]** required, **as specified in paragraphs (b), (c) and (d) of this subsection, for life insurance policies which provide an accelerated benefit for long-term care.**

(b) The disclosure statement shall be required both at the time:

1. Of application for the policy or rider; and

2. The accelerated benefit payment request is submitted.

(c) The statement shall disclose that:

1. Receipt of the accelerated benefits may be taxable; and

2. Assistance should be sought from a personal tax advisor.

(d) ~~[at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor.]~~ The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

Section 5. [6:] Prohibition Against Postclaims Underwriting. (1)

[All] Applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: "Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;
2. An assessment of functional capacity;
3. An attending physician's statement; or
4. Copies of medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the commissioner in the format prescribed by the National Association of Insurance Commissioners in Appendix A.

Section 6. [7:] Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies. (1) ~~If~~ a long-term care insurance policy or certificate ~~[shall not, if it]~~ provides benefits for home health care or community care services, **it shall not** limit or exclude benefits **by:**

(a) [By] Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) [By] Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health care services are covered;

(c) [By] Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) [By] Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his licensure or certification;

(e) [By] Excluding coverage for personal care services provided

by a home health aide;

(f) **[By]** Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) **[By]** Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) **[By]** Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) **[By]** Excluding coverage for adult day care services.

(2) **If** a long-term care insurance policy or certificate ~~[-if-]~~ provides for home health or community care services, **it** shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

Section 7. [8-] Requirement to Offer Inflation Protection. (1) An insurer shall not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or **a policy that provides for an increase in the period of coverage which shall meet [reasonable durations which are meaningful to account for reasonably] anticipated increases in the costs of long-term care services covered by the policy.** Insurers shall offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five (5) percent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder, but if the policy is issued to a group defined in KRS 304.14-600(4)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) Insurers shall include the following information in or with the outline of coverage. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period; and

(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection."

Section 8. [9-] Requirements for Application Forms and Replacement Coverage. (1) Application forms shall include the following questions designed to elicit information as to whether:

(a) ~~[-as of the date of the application-]~~ The applicant has another long-term care insurance policy or certificate in force as of the date of application; or

(b) ~~[whether]~~ A long-term care insurance policy or certificate is intended to replace;

1. Any other accident and sickness ~~[or long-term care]~~ policy or certificate presently in force; or

2. Any other long-term care policy or certificate presently in force.

(c) ~~[A supplementary application or other form to be signed by the applicant and agent.]~~ Except where ~~[the]~~ coverage is sold without an agent, a supplementary application or other form, containing the questions required by this section, may be used if signed by the:

1. Applicant; and

2. Agent.

(d) If a replacement policy is issued to a group, as ~~[With regard to a replacement policy issued to a group]~~ defined by KRS 304.14-600(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificateholder has been notified of the replacement.

1. ~~[(a)]~~ Do you have another long-term care insurance policy or certificate in force (including health care service contract or health maintenance organization contract)?

2. ~~[(b)]~~ Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

a. ~~[(1-)]~~ If so, with which company?

b. ~~[(2-)]~~ If that policy lapsed, when did it lapse?

3. ~~[(e)]~~ Are you covered by Medicaid?

4. ~~[(4)]~~ Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(2) Agents shall list ~~[any]~~ other health insurance policies they have sold to the applicant **which:**

(a) ~~[List policies sold which]~~ Are still in force; and

(b) Were ~~[List policies]~~ sold in the past five (5) years but ~~[which]~~ are no longer in force.

(3) Solicitations other than direct response.

(a) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods) or its agent shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage.

(b) One (1) of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

(c) The notice shall be provided as follows: ~~[The required notice shall be provided in the following manner:]~~

ADMINISTRATIVE REGISTER - 1760

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT: (Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Agent)

(Typed Name and Address of Agent)

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The [required] notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Insurer Name)

(5) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice

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shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

Section 9. [10.] Reporting Requirements. (1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) Each insurer shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.

(3) Reported replacement and lapse rates shall ~~do~~ not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(6) For purposes of this section, "policy" shall mean only long-term care insurance and "report" means on a statewide basis.

Section 10. [11.] Licensing. An agent shall not be ~~[No agent is]~~ authorized to market, sell, solicit, or otherwise contact a ~~any~~ person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by this state and maintaining appropriate licenses.

Section 11. [12.] Discretionary Powers of Commissioner. The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this administrative regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension would be in the best interest of the insureds;

(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Section 12. [13.] Reserve Standards. (1)(a) If ~~[When]~~ long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if ~~[in the case when]~~ the policy or rider is in claim status.

(c) Reserves for policies and riders subject to the requirements of this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.

(d) Single decrement approximations are acceptable if the

calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.

(e) The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, but the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(f) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, such as ~~[including, but not limited to,]~~ the following:

1. ~~[(a)]~~ Definition of insured events;

2. ~~[(b)]~~ Covered long-term care facilities;

3. ~~[(c)]~~ Existence of home convalescence care coverage;

4. ~~[(d)]~~ Definition of facilities;

5. ~~[(e)]~~ Existence or absence of barriers to eligibility;

6. ~~[(f)]~~ Premium waiver provision;

7. ~~[(g)]~~ Renewability;

8. ~~[(h)]~~ Ability to raise premiums;

9. ~~[(i)]~~ Marketing method;

10. ~~[(j)]~~ Underwriting procedures;

11. ~~[(k)]~~ Claims adjustment procedures;

12. ~~[(l)]~~ Waiting period;

13. ~~[(m)]~~ Maximum benefit;

14. ~~[(n)]~~ Availability of eligible facilities;

15. ~~[(o)]~~ Margins in claim costs;

16. ~~[(p)]~~ Optional nature of benefit;

17. ~~[(q)]~~ Delay in eligibility for benefit;

18. ~~[(r)]~~ Inflation protection provisions; and

19. ~~[(s)]~~ Guaranteed insurability option.

(g) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 13. [14.] Loss Ratio. Benefits under ~~[individual]~~ long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(1) Statistical credibility of incurred claims experience and earned premiums;

(2) The period for which rates are computed to provide coverage;

(3) Experienced and projected trends;

(4) Concentration of experience within early policy duration;

(5) Expected claim fluctuation;

(6) Experience refunds, adjustments, or dividends;

(7) Renewability features;

(8) All appropriate expense factors;

(9) Interest;

(10) Experimental nature of the coverage;

(11) Policy reserves;

(12) Mix of business by risk classification; and

(13) Product features such as long elimination periods, high deductibles, and high maximum limits.

Section 14. [15.] Filing Requirement. Prior to an insurer offering group long-term care insurance to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements

substantially similar to those adopted in this state.

Section **15. [46-]** Filing Requirements for Advertising. (1)(a) Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review or approval by the commissioner to the extent it may be required under state law.

(b) In addition, all advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.

(2) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

Section **16. [47-]** Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance.

(e) Every insurer marketing long-term care insurance shall establish auditable procedures for verifying compliance with the requirements of this subsection.

(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counselling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a program is available and the name, address, and telephone number of the program.

(2) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section **17. [48-]** Appropriateness of Recommended Purchase. In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

Section **18. [49-]** Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a

long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section **19. [20-]** Standard Format Outline of Coverage. This section of the administrative regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.

(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text which is emphasized in the standard format outline of coverage may be emphasized by any means which provide prominence to the text.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) Format for outline of coverage:

(INSURER NAME)
(ADDRESS-CITY & STATE)
(TELEPHONE NUMBER)
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
(Policy Number or Group Master Policy and
Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage):

Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)

(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

(c) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

1. (Provide a brief description of the right to return - "free look" provision of the policy).

2. (Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains these provisions, include a description of them).

(d) THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurer.

1. (For agents) Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.

2. (For direct response) (insert insurer name) is not representing Medicare, the federal government, or any state government.

(e) LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy).

(f) BENEFITS PROVIDED BY THIS POLICY.

1. (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums).

2. (Institutional benefits, by skill level).

3. (Noninstitutional benefits, by skill level).

(Any benefit screens shall be explained in this section. If these screens differ for different benefits, explanation of the screen shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens shall be explained).

(g) LIMITATIONS AND EXCLUSIONS.

(Describe:

1. Preexisting conditions;

2. Noneligible facilities or providers;

3. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

4. Exclusions and exceptions; and

5. Limitations).

This section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (f) of this subsection).

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

(h) RELATIONSHIP OF COST OF CARE AND BENEFITS.

Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

1. That the benefit level will not increase over time;

2. Any automatic benefit adjustment provisions;

3. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

4. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

5. Describe whether there will be any additional premium charge imposed, and how that is to be calculated).

(i) TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

1. Describe the policy renewability provisions;

2. For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;

3. Describe waiver of premium provisions or state that there are no **waiver of premium** [such] provisions; and

4. State whether or not the company has a right to change premium, and if this right exists, describe clearly and concisely each circumstance under which premium may change).

(j) ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN

DISORDERS.

(State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds).

(k) PREMIUM.

(1. State the total annual premium for the policy; and

2. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option).

(l) ADDITIONAL FEATURES.

(1. Indicate if medical underwriting is used; and

2. Describe other important features).

Section 20. [24.] Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the shopper's guide, but shall furnish the policy summary required under KRS 304.14-615.

Section 21. [22.] Permitted Compensation Arrangements. (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies. The commission or other compensation provided in subsequent (renewal) years by the replacing insurer shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.

(2) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders. [An insurer may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.]

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and must be provided for a reasonable number of renewal years.

(3) An insurer shall not provide compensation to its agents or other producers and agents or producers shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies.]

Section 22. [23.] Repeal of 806 KAR 17:080. 806 KAR 17:080, Long-term care insurance, is repealed.

APPENDIX A
RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF _____

ADMINISTRATIVE REGISTER - 1764

FOR THE REPORTING YEAR 19()

Company Name: _____
Address: _____
Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one (1) form per rescission.

Policy Form #	Policy & Certificate #	Name of Insured	Date of Policy Issuance	Date's Claim's Submitted	Date of Rescission
_____	_____	_____	_____	_____	_____

Detailed reason for rescission: _____

Signature _____

Name and Title (please type) _____

Date _____

RONNIE C. MOORE, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: August 24, 1992

FILED WITH LRC: September 14, 1992 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (As Amended)

815 KAR 25:010. Manufactured [Mobile] homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, 42 USC 5401

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY AND FUNCTION: KRS 227.570 and 227.590 requires the Mobile Home Certification and Licensure Board to establish, and the State Fire Marshal's Office to enforce rules and administrative regulations governing the standards for [manufacture, sale, installation and alteration of] manufactured housing [mobile homes]; and the office of the State Fire Marshal to license manufactured [mobile] home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. This administrative regulation is necessary to establish standards for the design, manufacture, installation and sale of new and used manufactured homes which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers, or manufactured homes constructed in facilities located within or outside of the Commonwealth. This administrative regulation is [These regulations are] consistent with Title 6 of the Federal Housing and Community Development Act of 1974 and is [are] intended to assure safety for owners and occupiers of new and used manufactured [mobile] homes sold by dealers. This amendment is necessary to specify tie-down requirements given to the authority having jurisdiction under referenced standards. [This amendment is

necessary to clarify that all mechanical systems in mobile homes are to be inspected when dealers sell used mobile homes, to create a definition of installation, to tier the licensing of dealers whose only activity is brokering mobile homes owned by others located on private property and to make it unlawful for a dealer to sell a mobile home if he cannot provide its title.]

Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number 501(B) listed in Section 4(3) of this administrative regulation and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel burning systems or electrical systems or smoke detectors or their function [unless excluded by this administrative regulation]. It shall include, but not be limited to, the addition or deletion of windows, doors, or partitions; the addition of an electrical circuit to accommodate a washer or dryer; the addition of a central air condition system when the unit was not factory installed; the conversion of a heating, cooling, fuel-burning system from one (1) fuel to another such as electrical to gas or gas to electric or oil; the use of improperly listed materials for the repair of a unit or the installation of an unlisted heating, cooling or fuel-burning appliance. However, the replacement of equipment in kind, i.e., gas furnace with gas furnace or the replacement or changing of furniture to accommodate the consumer or other cosmetic changes shall not constitute an alteration or conversion.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell manufactured housing [mobile homes] within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used manufactured [mobile] homes before registration or title in Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new manufactured [mobile] homes not covered by the HUD Act.

(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used manufactured [mobile] homes.

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(15) "Manufacturer" as defined by KRS 227.550(8).

(16) "Manufactured housing" as defined by KRS 227.550(7).

(17) "[~~Mobile home or~~] Manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.

(18) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(19) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured [~~mobile~~] home. It also means negotiating the purchase and sale or exchange of manufactured [~~mobile~~] homes for a fee, commission, compensation, or other valuable consideration.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Red tag" means a written notice which is applied to a manufactured [~~mobile~~] home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this administrative regulation signifying that the manufactured [~~mobile~~] home is not in compliance with applicable laws.

(22) "Registration" means the transfer of title or any other official recording of change of ownership.

(23) "Salvage unit" means any used manufactured [~~mobile~~] home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

(25) "Used manufactured [~~mobile~~] home" means any manufactured [~~mobile~~] home unit which shall be [~~is~~] offered for sale after the original purchase. Used manufactured homes [~~These units~~] are not covered by the HUD Act.

Section 2. Administration [~~Authorization~~] and Enforcement. (1) An [~~This administrative regulation is authorized by KRS 227.590 and established pursuant to the procedures set forth in KRS Chapter 13A, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to~~] manufactured [~~mobile~~] homes. Title VI of the Federal Housing and Community Development Act of 1974 (HUD Act), shall govern all new manufactured [~~mobile~~] homes.

(2) Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office shall [~~is authorized to~~] enter each [~~any~~] dealer's place of business in order to inspect [~~any~~] manufactured [~~mobile~~] homes for which the office has issued a seal of approval, or to inspect the manufactured [~~mobile~~] home's equipment and its installations to insure compliance with the Act, [~~the code and~~] the HUD Act and this administrative regulation [~~these regulations~~].

(2) Upon complaint and request by the owner or occupant, a privately owned manufactured [~~mobile~~] home requiring a seal may be entered to determine compliance with this administrative regulation [~~these regulations~~].

(3) When it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured [~~mobile~~] homes shall be removed or exposed in order that a compliance inspection can be made.

Section 3. Exemptions from Licensure as a Dealer. (1) This administrative regulation shall not apply to individual sales of

manufactured homes by the owner of the home.

(2) If a person sells more than two (2) homes in one (1) year, a license shall be required pursuant to KRS 227.620. [~~Scope and Purpose of the Act and Regulations. Except to the extent otherwise stated in the Act, this administrative regulation shall govern the design, manufacture, installation and sale of new and used manufactured~~] mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers. Any person, firm or corporation who sells or offers for sale in Kentucky three (3) or more manufactured [~~mobile~~] homes in any consecutive twelve (12) month period shall be considered a dealer subject to all requirements set forth in this administrative regulation and KRS 227.550 to 227.660. This administrative regulation shall [~~These regulations~~] apply to manufactured [~~mobile~~] homes constructed [~~manufactured~~] in [~~manufacturing~~] facilities located within or outside the Commonwealth.]

(3) Manufactured housing [~~Mobile homes~~] brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in manufactured housing [~~mobile homes~~] not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of manufactured housing [~~mobile homes~~].

(3) All new manufactured [~~mobile~~] homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is incorporated by reference in subsection (3) of this section, shall be the standard for [~~all~~] used manufactured [~~mobile~~] homes, [~~unless otherwise provided in this administrative regulation,~~] and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) Used manufactured homes.

(a) All manufactured [~~mobile~~] homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and a new seal affixed to the unit or a new seal may be affixed over the existing seal or label.

(b) If [~~When~~] a new manufactured [~~mobile~~] home purchased under the provision of the HUD Act is resold, it shall become [~~becomes~~] a used manufactured [~~mobile~~] home and shall be subject to the provisions of this section.

(c) Class "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit.

(d) A ~~[No]~~ salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer.

(e) Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All manufactured housing ~~[mobile-homes]~~ shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday. The installation shall include that the unit or units shall be tied down and anchored at least at each of the four (4) corners of the home.

(7) All new manufactured ~~[mobile]~~ homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used manufactured ~~[mobile]~~ homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(e) of this subsection shall not apply to manufactured ~~[mobile]~~ homes built prior to the HUD Act.

(8) A ~~[Any]~~ licensed Kentucky manufactured ~~[mobile]~~ home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of manufactured ~~[mobile]~~ homes shall be permitted to inspect and certify those manufactured ~~[mobile]~~ homes purchased in another state for use within the Commonwealth of Kentucky. A ~~[Any]~~ dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified manufactured housing ~~[mobile-homes]~~ dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this administrative regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of manufactured ~~[mobile]~~ homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. ~~[Any]~~ Questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regulation adopted shall be submitted to the office, in writing, by any

interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A ~~[No]~~ manufacturer shall not manufacture, import, or sell any manufactured housing ~~[mobile-home]~~ in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Manufactured housing ~~[Mobile-homes]~~ not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A \$500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.

(3) Quality control measures shall be provided for all manufactured housing ~~[mobile-units]~~ not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which [will] ~~[will]~~ direct the manufacturer to construct manufactured housing ~~[mobile-homes]~~ in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this administrative regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 13 of this administrative regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not comply with this administrative

~~regulation [conform with these regulations]~~, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

- (a) The corporate name is changed;
- (b) The main address of the company is changed;
- (c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
- (d) The location of any manufacturing facility is changed;
- (e) A new manufacturing facility is established; or
- (f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for manufactured housing [mobile home] units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the manufactured [mobile] homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured [mobile] home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing [mobile homes] shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

- (a) Name and address of the chief managing officer;
- (b) Location of each and every established place of business;
- (c) Social security number and date of birth of chief managing officer;
- (d) Affidavit certifying compliance with the Act and this administrative regulation [regulations];
- (e) Names of offices, if dealership in corporate form;
- (f) Names of partners, if dealership in partnership form;
- (g) A copy of a valid Kentucky sales tax certificate;
- (h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be \$200. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.

~~[(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of location to another municipality shall require a new license.]~~

~~(5) [(6)]~~ The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage.

~~(6) [(7)]~~ Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.

(7) Alterations.

~~(a) [(8)]~~ A dealer shall not have the authority to make any alterations to any manufactured [mobile] home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used manufactured [mobile] homes, permission may be obtained from the State Fire Marshal's Office in accordance with this administrative regulation.

~~(b) A [Any]~~ dealer altering a manufactured [mobile] home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. ~~[Alteration of a manufactured [mobile] home shall include but is not limited to: addition or deletion of windows, doors, or partitions; conversion of a heating, cooling, fuel burning systems from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heating, cooling, or fuel burning appliance, etc. The following shall not constitute an alteration or conversion: replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.]~~

(9) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

- (a) Dealership name is changed;
- (b) Established place of business is changed (move to a different county requires a new license);
- (c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or
- (d) There are changes in the principal officers of the firm.

(10) Out-of-state dealers with valid Kentucky licenses. Exception: an [any] applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.

(11) If a [any] person who sells manufactured [mobile] homes does not take possession or ownership of the manufactured [mobile] homes and offers for sale used manufactured [mobile] homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this administrative regulation with the following conditions:

- (a) His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and
- (b) The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be affixed to the unit prior to offering it for sale.

Section 9. Temporary License. (1) A [No] person, other than one duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured housing [mobile homes] within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a

specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing [mobile homes] for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license shall be [is] granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used manufactured housing units [mobile homes] shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;

(d) Possess a valid Kentucky Sales Tax Certificate;

(e) Provide all other information required by the office;

(f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a manufactured [mobile] home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured [mobile] homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured [mobile] homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units [mobile homes] not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured [mobile] home except as permitted between licensed dealers, pursuant to Section 4(5) of this administrative regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label, ~~except as otherwise provided in this administrative regulation~~. A [Any] dealer who has acquired a used manufactured [mobile] home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new manufactured [mobile] home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.

2. Any dealer, except one altering a manufactured [mobile] home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. A [Any] person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each Class "A" seal or twenty-five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a manufactured [mobile] home not covered by the HUD Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those manufactured [mobile] homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. A [Any] dealer proposing an alteration to a manufactured [mobile] home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

a. Make and model of manufactured [mobile] home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications, if [when] required.

e. Location of the manufactured [mobile] home where work is to be performed.

f. Name and address of the owner of the manufactured [mobile] home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing manufactured housing [mobile homes] not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used manufactured [mobile] home under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these administrative regulations [rules] and the code have been violated, continues to manufacture, sell or offer for sale manufactured [mobile] homes in violation of these administrative regulations [rules] and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a manufactured [mobile] home not covered by the HUD Act is found to be in violation of these administrative regulations [rules], the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this administrative regulation.

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(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific manufactured [mobile] home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. [Ne] Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the manufactured [mobile] home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a manufactured [mobile] home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by administrative regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. A [Ne] dealer shall not sell or offer for sale any manufactured [mobile] home upon which he cannot present a marketable title to the purchaser.

Section 13. Manufactured [Mobile] Home Unit Certification Format.

MANUFACTURED [MOBILE] HOME UNIT CERTIFICATION FORMAT

Name of Manufacturer			
Mailing Address		County	
City	State	Zip Code	

I hereby certify that the manufactured [mobile] homes as described hereon have been constructed in compliance with NFPA 501 B.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

BY _____
Date _____ Person Authorized to Certify These Units

Section 14. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

Name of Dealer		
Mailing Address	County	
City	State	Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and administrative regulations thereto and that the new manufactured [mobile] homes described hereon have the appropriate HUD label.

HUD LABEL #/ KY Seal #		Date Mfg.	Purchaser Make & Address
No. Serial #	Seal #		

This form shall be used in reporting units to the field inspector.

BY _____
Date _____ Person Authorized to Certify These Units

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 24, 1992
FILED WITH LRC: October 15, 1992 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (As Amended)

815 KAR 25:030. Certified installers of manufactured housing.

RELATES TO: KRS 227.550-660

STATUTORY AUTHORITY: KRS 227.570(2), 227.590(1)

NECESSITY AND FUNCTION: This administrative regulation is necessary ~~[in order]~~ to establish criteria for the proper installation of regulated manufactured housing by persons qualified to make the installation as required by KRS 227.570(2).

Section 1. Definitions. ~~[The following definitions shall apply to this administrative regulation:]~~

(1) "Approved course of education" means education instruction approved by the Mobile Home Certification and Licensure Board to qualify for certification or to renew certification. This definition shall include:

(a) Manufactured Housing Resources Course, P. O. Box 9, Nassau, Delaware 19968, George Porter, Instructor.

(b) Manufactured Housing Installation Course, prepared by the National Conference of States on Building Codes and Standards (NCS/BCS), 505 Huntmar Park Drive, Suite 210, Herndon, Virginia 22070.

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(c) Other courses approved by the board.

(2) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(3) "Certified installer" means the person qualified to install manufactured (mobile) homes in Kentucky, including the individual applicant.

(4) "Certified installer examination" means the written or oral examination administered by the office to persons seeking to be certified as a certified installer; or the examination administered by the organization following an approved course of education.

(5) "Certified installer identification card" means the card issued by the office to a certified installer.

(6) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(7) "Office" means as defined in KRS 227.550(13).

(8) "Person" means an individual, partnership, firm, corporation, association, or other entity.

Section 2. Requirements for Certification. (1) After September 1, 1993, all applicants for certified installer shall comply with the following:

(a) Make application to the department on the form provided in Section 6 of this administrative regulation;

(b) Pay an application fee of fifty (50) dollars;

(c) Attend fifteen (15) class hours of an approved course of education; and

(d) Pass the certified installer examination approved by the board.

(2) Grandfather clause. Prior to September 1, 1993, examination shall not be necessary if the applicant provides satisfactory proof to the office that the applicant has installed a minimum of ten (10) manufactured homes within the twenty-four (24) month period prior to September 1, 1993, and that the applicant has attended fifteen (15) class hours of an approved course of education.

Section 3. Renewal of Certification; Continuing Education. A certified installer shall be recertified annually from July 1 until June 30 of the following year after:

(1) Making approved application, including a twenty-five (25) dollar renewal fee; and

(2) Providing proof of a minimum of five (5) class hours of educational courses, provided by or approved by the department, annually.

Section 4. (1) Mandatory certification. After the effective date of this administrative regulation, each manufactured (mobile) home regulated by KRS Chapter 227 shall be installed by a certified installer or under the supervision of a certified installer.

(2) All installations shall be made in accordance with standards set forth in 815 KAR 25:010, Section 4(6).

Section 5. Application of Installation Certification Label. The certified installer making the installation of any unit shall apply a label provided by the department to the unit following installation which **identifies the date** [tells when] and by whom the installation was made.

Section 6. Application Form. Any person, firm or company making application to be a certified installer shall complete the following form and the certificate shall be issued jointly in the name of the applicant and any company with whom the applicant shall be associated.

OFFICE OF THE STATE FIRE MARSHAL
MANUFACTURED HOUSING SECTION
1047 US 127 SOUTH
FRANKFORT, KY 40601

CERTIFIED INSTALLER APPLICATION

This application must be COMPLETED in detail and PRINTED. No application shall be reviewed unless the instructions herein are complied with. All statements made in this application are subject to the penalties of perjury as set forth in the Certificate at the end of the application.

"Applicant," as used in this application, means an individual who qualifies himself and the company for which the applicant works.

1. CERTIFIED INSTALLER - \$50. An installer of manufactured (mobile) homes shall be required to renew certification annually, July 1 through June 30 the following year, as required by 815 KAR 25:030.

2. Department of Revenue Sales and Use Tax Permit Number _____

3. Certificate to be issued in:

(Company Name)(Individual Name)

4. Name of owner or partners (principal owners or corporate officers indicate percent of business owned and title):

NAME	TITLE	PERCENT
------	-------	---------

_____	_____	_____
_____	_____	_____
_____	_____	_____

Corporation Name: _____

5. Exact location of place of business:

Street Address	City
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Zip Code	County	Telephone #
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6. Mailing address, if different from location of place of business:

7. Is the Applicant or Applicant's Company also a licensed Mobile Home Dealer in Kentucky? YES___ NO___. If so, what is the current dealer license number. _____

8. Is the Applicant or Applicant's Company licensed as a dealer in any other state? YES___ NO___. If so, list other states. _____

9. The undersigned is the applicant and is qualified to install manufactured (mobile) homes as required by 815 KAR 25:030. The applicant has read the statement contained in this application and states that the same are true and correct. The statements made herein are made under full and complete knowledge that fraudulent or misleading statements may be grounds for suspension, revocation or denial of the certificate for which this application is submitted. The applicant hereby certifies compliance with 815 KAR 25:030.

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Signature of Applicant for _____
(individual taking exam) Company (if applicable)

Social Security Number _____ Home Telephone Number _____

(GRANDFATHER CLAUSE ONLY) PROOF OF INSTALLATION OF 10 MANUFACTURED (MOBILE) HOMES

List the name and address of each home installed by applicant.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

DENNIS L. DECKER, Chairman

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 24, 1992

FILED WITH LRC: October 15, 1992 at 10 a.m.

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

902 KAR 2:160. Human immunodeficiency virus education, continuing education for professionals.

RELATES TO: KRS 211.180, 214.020, 214.610

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 214.610 provides that each licensee under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, and 335 shall complete a Cabinet for Human Resources approved educational course as specified in the respective chapters on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS [for the first time by July 1, 1994 (July 1, 1992, for nursing and physical therapy) and] at least once during each licensure cycle [thereafter].

Section 1. Definitions. [(4)] "Continuing licensure" means the renewal of an existing license as part of the periodic renewal cycle adopted by the respective licensure board.

[(2)] "National accrediting body" means a council or commission which examines specific curricula or courses and certifies that they are adequate for the granting of continuing education credit.]

Section 2. The educational course approved by the cabinet for continuing education shall be either of the following:

(1) Any one of those courses found on the **CHR AIDS approved course list** [official listing] of the AIDS education program, CHR,

which is designated as appropriate for licensed professionals. The official listing is hereby incorporated by reference and may be obtained from the AIDS Education Program, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4 p.m. on Monday through Friday excluding legal holidays.

(a) Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions.

(b) Requests for inclusion on the official listing may be made by any interested party by submitting, to the AIDS education program, material including the title, style (correspondence, in-person, video or other) and brief description of the course.

(c) A course-description brochure will suffice to meet this requirement; or

(2) Any [AIDS/ HIV education program, [er] course, class, or seminar given by a provider that [having received approval of a national accrediting body;

(3) Any AIDS/HIV education course which] has received the approval of a national professional organization which regularly approves continuing education courses [for the particular profession].

Section 3. All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV, methods of prevention of HIV infection, and currently recognized methods of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards **pursuant to 29 CFR 1910.1030;**

(4) A brief review of the **professional ethical and legal standards applicable to a caregiver for a person with [moral, ethical, and legal issues surrounding] HIV infection;**

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 4. For professions with existing continuing education requirements, the minimum number of continuing education hours per certification cycle devoted to AIDS/HIV shall be set by the licensure board and shall be made part of the overall requirement (included within the total statutory number of hours, where those exist). For professions without the existing requirements, the minimum course length per certification cycle shall be two (2) hours.

Section 5. Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual **materials** shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses designed to be given in person.

Section 6. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more license boards, or a licensure board so requests, CHR may inspect that course and may remove it from the approved list if it does not meet quality standards of this **administrative** regulation.

Section 7. Each licensee shall certify to the board the completion of an approved course either:

(1) On a form created and distributed by CHR; or

(2) On the general continuing education form used by his

licensure board, if one exists; or

(3) In the manner by which the boards currently audit continuing education requirements, as a condition of renewed licensure under KRS 214.610.

Section 8. ~~Each licensure board (except nursing and physical therapy) shall, by August 1, 1991, submit an interim report to CHR stating the total number of licensees, as of July 1, and of that number, the number that had met the AIDS education requirement.]~~ Each licensure board shall submit to CHR, ~~[by December 31 of each year, beginning in 1991 (except nursing and physical therapy, which will submit) starting in 1992]~~ a report stating the number of license renewals applied for during the year ~~and [.]~~ the number or percent of licensees meeting the AIDS education requirement. The report shall also include a summary of disciplinary actions taken by the boards for noncompliance.

RICE C. LEACH, M.D., Commissioner

LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: November 10, 1992

FILED WITH LRC: November 11, 1992 at 1 p.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(As Amended)

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 administrative 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 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.

(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 administrative 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, [er] 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, [er] rules [and-regulations] or policies and procedures shall [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, [er] rules [and-regulations] or policies and procedures shall [must] be reviewed at least every two (2) years and revised as necessary; and

(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)(a) The program [executive] director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be a master's degree in psychology, social work, nursing, or education with appropriate licenses.

(c) 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.

(d) 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, [er] rules or policies [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 administrative 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 shall [must] be performed by a psychiatrist specified within this administrative 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 shall [must] be performed by a recreational therapist specified within this administrative 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 subparagraph 3 of this paragraph [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

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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 shall [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 administrative 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

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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 shall ~~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 administrative 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 administrative 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 shall ~~[must]~~ be practiced in accordance with state fire administrative 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 shall ~~[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]** Medications shall **not** 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~~for 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.

1. 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.

2. 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.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. 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.

5. 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) A ~~[No]~~ facility shall not 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

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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 Department for Social Insurance Division of Management and Development (As Amended)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g [Cabinet for Human Resources, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Vol. II, p. 264]

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible [under Title XVI of the Social Security Act as amended by Public Law 92-603] to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program; referred to as [SSI]. KRS 205.245 provides [not only] for the mandatory supplementation program and [but] also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the SSI payment and other income for the current month.

(2) Recipients include [Also included are these] former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December level.

(4) [(+)] The mandatory payment is increased only;

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) [(2)] In cases of a man and wife living together, income changes after September, 1974, will result in an increased mandatory

payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 3, 4 and 5 of this administrative regulation, meets [these persons meeting] technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires [(except when specified in 904 KAR 2:015) who require] special living arrangements; and

(c) Has [who have] insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home as defined in 902 KAR 20:036;

(b) Residence in a [or] family care home as defined in 902 KAR 20:041; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) A supplemental payment shall [is] not be made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the following persons living with the applicant:

(a) The spouse;

(b) Parent [(of an adult disabled child or a minor child)]; or

(c) Adult child [(of an aged or disabled parent,)-who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI.]

(4) If potential eligibility exists, application for SSI shall be [is] mandatory.

Section 3. Resource[s] Consideration[s]. [In determining countable resources and the effect of resources on eligibility, the following policies are applied:]

(1) Except as stated in subsection (2) of this section, countable [Consider] resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.]

(2) The individual or couple is not eligible if countable resources exceed the limit of:

(a) \$2000 for individual; or

(b) \$3000 for couple. [The upper limit for resources for an individual and for a couple is set at \$1,700 and \$2,550, respectively, effective January 1, 1986; at \$1,800 and \$2,700, respectively, effective January 1, 1987; at \$1,900 and \$2,850, respectively, effective January 1, 1988; and at \$2,000 and \$3,000, respectively, effective January 1, 1989.]

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.]

Section 4. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, [Establish the amount of] income is considered according to policies for the medically needy in 907 KAR 1:004.

(2) The [In determining the amount of] optional supplementation payment is determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) [-including any] Payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection.

tion ~~[; is deducted]~~ from the standard of need in Section 5 of this regulation.

(3) ~~[with the following exceptions:~~

(4) Income of the ineligible spouse is:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved ~~[for the needs of the ineligible, non-SSI spouse or minor dependent children]~~ in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child. ~~[each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse.]~~

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. ~~[When conserving for the needs of the minor dependent children;]~~

(5) Income of the child ~~[children]~~ shall be ~~[appropriately]~~ considered ~~when conserving for the needs of the minor dependent child so [that] the amount conserved does not exceed the allowable amount. [When the eligible individual and spouse each have earnings;]~~

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) ~~[(2)]~~ If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) shall be [is] conserved for the spouse.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

Section 5. Standard of Need. (1) The standard shall be [is] ~~[;]~~ based on living arrangement~~[; from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is]~~ as follows:

(a) For an eligibility determination[s] for personal care homes made on or after January 1, 1993 [1992]~~[; not less than] \$732 [720];~~

(b) For an eligibility determination[s] for family care homes made on or after January 1, 1993 [1992]~~[; not less than] \$537 [525];~~

(c) Caretaker.

1. For an eligibility determination[s] for a single individual, or an eligible individual with an ineligible spouse ~~[one] who is not aged, blind, or disabled[]]~~ made on or after January 1, 1993 [1992]~~[; not less than] \$467 [445];~~

2. For an eligibility determination[s] for an eligible ~~[married]~~ couple, both ~~[eligible -] [aged, blind, or disabled and [; with] one (1) requiring care made on or after January 1, 1993 [1992]~~[; not less than] \$680 [664];~~~~

3. For an eligibility determination[s] for an eligible ~~[married]~~ couple, both aged, blind or disabled [eligible] and both requiring care made on or after January 1, 1993 [1992]~~[; not less than] \$724 [706].~~

(2) In couple cases, when both are eligible, the couple's income is combined prior to comparison with the standard of need. ~~[; and]~~ One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a [The standard includes] forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital, psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Citizenship and Residency. (1) Citizenship requirements. ~~[To be eligible;]~~ An applicant or recipient shall be:

(a) A citizen of the United States; or

(b) An alien legally admitted to this country; or

(c) For permanent residence an alien who is residing in this country under color of law. ~~[An alien shall have been admitted for permanent residence;]~~

(2) Residence requirements.

(a) The applicant or recipient shall ~~[also]~~ be a resident of Kentucky.

(b) Except as specified in Sections 9 through 13 of this administrative regulation, ~~[Generally, this means]~~ the individual shall be residing in the state for other than a temporary purpose~~[; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals].~~

(c) Except as specified in Section 6 of this administrative regulation, the residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable ~~[except as specified in Section 6 of this regulation].~~

(3) ~~[(2)]~~ Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. ~~[In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable;]~~

(a) Except ~~[that]~~ with regard to the requirement shown in Section 6 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(b) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(c) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(d) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(4) ~~[(3) When determining residency;]~~ ability of the institutionalized individual to indicate intent ~~[to become a Kentucky resident[]]~~ shall be considered when determining residency of the individual. An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions. ~~[if the individual is institutionalized;]~~ The individual is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an [His] I.Q. of [is] forty-nine (49) or less or [he] has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) [He] Is judged legally incompetent; or

(c) ~~[Medical documentation, or other documentation acceptable to the state, supports a finding that he] Is found incapable of indicating intent based on medical or other documentation acceptable to the state.~~

~~[(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions;]~~

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence shall be [is] Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence shall be [is] Kentucky if he:

(a) Is residing in the state; and

(b) Intends [has the intention] to remain permanently or for an

indefinite period; ~~{[or:]~~

(c) If incapable of indicating intent, is simply residing in the state~~{}~~.

(7) For ~~an [any]~~ institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be [is] Kentucky if Kentucky is the state of residence of the individual's:

(a) ~~The state of residence of the individual's~~ Parents; or

(b) If one has been appointed, his legal guardian ~~[if one has been appointed, is Kentucky]; or~~

(c) ~~The state of residence of the~~ Parent applying for the supplemental payment on behalf of the individual if:

1. ~~[is Kentucky, when]~~ The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For ~~an [any]~~ institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be [is] Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) ~~[-]~~ If this cannot be determined, the state of residence shall be [is] Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency ~~according [pursuant]~~ to subsections (7) and (8) of this section, the state of residency shall be [is] Kentucky if:

(a) ~~[when]~~ The individual is residing in Kentucky; and

(b) A determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency ~~according [pursuant]~~ to subsections (7) and (8) of this section, the state of residence shall be [is] Kentucky if ~~[when]~~ Kentucky and the state ~~that [which]~~ would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status. If [-i.e., when] a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For an institutionalized individual ~~[other institutionalized individuals (i.e., those individuals)]~~ who ~~is [are]~~ both age twenty-one (21) or over and capable of indicating intent~~{}~~, the state of residence shall be [is] Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except as stated in subsections (3) through (11) of this section:

(a) ~~An [-any]~~ individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky; and

(b) ~~An [any]~~ individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if ~~[so long as]~~ he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky. ~~[An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.]~~

(15) Except in the preceding provisions of this section, a former

~~Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.]~~

(15) If the ~~[-]~~ ~~aged, blind, or disabled person resides [shall be eligible for state supplementation while residing]~~ in a personal care home or family care home ~~[unless such home]~~ is not licensed under KRS 216B.010 to 216B.131, he shall not be eligible for state supplementation.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The ~~[in order to qualify]~~ PCH shall meet the following criteria to qualify for a supplementation payment:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131; and ~~[-]~~

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation ~~including [such as]~~ mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; ~~{}~~ or

(b) A primary or secondary diagnosis of mental illness ~~{[excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or]}~~

(c) ~~A [-]~~ ~~An individual whose~~ medical history ~~that~~ includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis [shall meet the criteria of mental illness, regardless of the present diagnosis].

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it has a conditional rating [is rated] by the Office of Inspector General ~~[as "conditional"]~~. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician (CMT) training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease ~~[licensed nurse or CMT]~~ staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be [is not] required. ~~[eligibility continues as long as criteria continues to be met.]~~

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.]

(7) ~~[(8)]~~ The PCH shall provide DSI ~~[with its tax identification number and address annually and]~~ with a monthly report.

(a) The report shall list:

1. ~~[of]~~ All residents of the PCH ~~[(including resident's social~~

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security number) who were residents [of the PCH] on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. [listing with] A star shall indicate [which indicates] a resident has a MI or MR diagnosis.

2. [and note with] A check mark shall indicate a resident receives [these residents who receive] state supplementation [but are not mentally ill or mentally retarded].

3. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month. [For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.]

(8) [(9)] The PCH shall notify DSI if [when] its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. (1) The PCH licensed nurse or individual who has successfully completed CMT training shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) [(4)] MI or MR training shall be provided through a one (1) day workshop. [Training will cover at least] The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side effects and adverse medication reactions [especially] with special attention [regard] to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation[etc].

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) Instruction in providing [How to provide] necessary activities to meet the needs of mentally ill or mentally retarded residents.

(3) [(2)] Initial training shall include the licensed nurse or the individual who has successfully completed CMT training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. [For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter.]

(4) To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year [one (1) additional staff member in each of the quarters following the initial training].

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR training; or

2. Is enrolled in the next scheduled MI or MR training workshop at the closest location.

(5) [(3)] The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop;

and

(b) A listing to DSI of staff who completed the training workshop.

(6) [(4)] DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR program. [in accordance with 904 KAR 2:060.]

Section 10. MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify [their] eligibility to participate in the MI or MR supplement;

(a) [-] The PCH's initial MI or MR certification may be separate from the annual survey;

(b) [-However, after] The initial MI or MR certification[-the certification] shall be in effect until the next [subsequent] licensure survey that [-which] can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

[(1)] Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.]

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that [which] may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side effects.

(3) [The Division of Licensing and Regulation shall be provided] The MI or MR training package shall be provided to the Division of Licensing and Regulation to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the training certification [listing submitted to DSI] prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. [This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months.] The PCH is responsible for notifying DSI, within ten (10) working days, if [when] the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth

working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner

LEONARD E. HELLER., Secretary

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

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

904 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, 205.520(3), 42 CFR 435.907, 435.909, 45 CFR 206(a)(1)

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility of administering public assistance programs including [under Titles IV-A, XVI and XIX of the Social Security Act, namely] Aid to Families with Dependent Children (AFDC), Mandatory and Optional Supplementation of the aged, blind and disabled (MS) and (OS), and Medical Assistance (MA). This administrative regulation sets forth the procedure by which an application for assistance under these programs shall be [titles is] made.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for any assistance program administered by the Cabinet for Human Resources through the Department for Social Insurance.

(2) An individual shall be [is] eligible for MA without a separate application if he receives:

(a) AFDC;

(b) MS;

(c) OS; or

(d) [eligible for] Supplemental security income through the Social Security Administration [is eligible for MA without a separate application].

(3) An SSI applicant may file [is not precluded from filing] an application for MA with the Department for Social Insurance.

(4) An individual applying on the basis of age, blindness, or disability shall not be eligible as a medically needy individual, under 907 KAR 1:011, if [when] his income and resources are within SSI limits.

(5) Denial of SSI assistance for technical reasons by the Social Security Administration [for supplemental security income for technical reasons] is also considered a denial of MA.

Section 2. Application Process. An application shall [will] be considered to have been made when the individual or his representative has signed, under penalty of perjury:

(a) The Department for Social Insurance application form; [application form prescribed by the Department for Social Insurance] or

(b) The Social Security Administration application form [;] for SSI; [supplemental security income;] and

(c) The [such] application has been received at the appropriate office.

Section 3. Who May Sign an Application. (1) Except for a case based on incapacity, an application for AFDC shall be signed by:

(a) The relative with whom a needy child lives; [or]
 (b) The legally appointed committee of the relative; or
 (c) A representative authorized in writing to act on behalf of the relative.

(2) An application for AFDC based on incapacity shall be signed by:

(a) Any individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

(3) [(2)] An application for MA shall be signed by:

(a) The individual requesting assistance;

(b) The relative with whom the child lives; or

(c) An interested party acting in behalf of the applicant.

(4) [(3) Prior to July 1, 1982;] An application for [AFDC FC (foster care) or] MA for children in foster care or private child caring institutions shall be signed by the representative of:

(a) The agency to which the child is committed; or

(b) The institution in which the child is placed.

(5) [(4)] An application for state supplementation shall be signed by:

(a) The aged, blind or disabled individual;

(b) An interested party;

(c) His~~her~~ legally appointed committee; or

(d) The representative payee receiving the SSI [supplemental security income] benefit.

Section 4. Where Applications are Filed. (1) Except for a concurrent application for MA and SSI, an application shall [Applications are to] be filed in the office of the Department for Social Insurance in the county in which the applicant resides.

(2) [except that] A concurrent application for SSI [supplemental security income] and MA shall be [is] filed in the service area office of the Social Security Administration.

(3) Application by mail.

(a) [(2) When] A Kentucky resident who is temporarily out-of-state, or someone acting on his behalf may initiate the application process by mail [a letter from the applicant, an interested party or an out-of-state agency will be accepted as the initiation of the application process] when:

1. An emergency arises from accident or sudden illness;

2. Care and services are needed immediately; and

3. Health would be endangered by returning [if he undertook to return] to the state.

(b) Upon notification of the emergency an [In this situation, the official] application form will be forwarded to the initiating party.

Section 5. Action on Applications. (1) A decision shall be made on each application and payment made [a check mailed] within:

(a) [five (5) days for emergency assistance;] Forty-five (45) days for AFDC or MA for families and children; or

(b) Ninety (90) days for MA or OS determinations in which permanent and total disability must be established.

(2) Exception to this [the above] time standard may be made when:

(a) The applicant [is cooperating but] is unable to obtain necessary verification for a determination of eligibility; [an eligibility decision to be made] or

(b) For [in instances in which delay is beyond the control of the department, that is,] failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician or because of an [some] administrative [or other] emergency [that could not be controlled by the department].

(3) The case record shall document the cause for the delay when the above time standards are not met; [the case record shall document the cause for the delay].

(4) Failure to process an application within the above time frame shall not be used as the basis for denial.

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~~[Section 6. Provisions in this regulation shall become effective July 16, 1990, unless otherwise specified.]~~

Section 6. Material Incorporated by Reference. (1) Forms necessary for application for benefits under the AFDC, MS, OS or MA programs are incorporated effective January 1, 1993. These forms include the PA-1, revised October 1992, the PA-1A, revised effective March 1991, PA-1P, revised April 1992, and the PA-1UP, revised effective May 1991.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner

LEONARD E. HELLER., Secretary

APPROVED BY AGENCY: October 15, 1992

FILED WITH LRC: October 21, 1992 at 1 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

**NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION CABINET**

Department for Environmental Protection

Division for Air Quality

(Amended After Hearing)

401 KAR 63:035. Gasoline dispensing facilities, Stage II.

RELATES TO: KRS Chapter 224, 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120; 42 USC 7511a(b)(1)(A)

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7511a(b)(3), 7521(a)(5), 7624, 7625

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from gasoline dispensing facilities.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) "Average monthly throughput" means the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months.

(2) "Boot" or "bellows" means an accordion-like tubular cover used over a gasoline nozzle to capture the gasoline vapors displaced during vehicle refueling.

(3) "Cabinet" has the meaning given it in KRS 224.01-010.

(4) "CARB" means the California Air Resources Board.

(5) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(6) "Coaxial hose" means a hose that has the configuration of a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(7) "Compliance test" means a test conducted or witnessed by the cabinet used to determine compliance with the provisions of all applicable administrative regulations prior to issuance of a permit to operate.

(8) "Dry break" means a poppet valve seal to which a vapor return hose can be attached.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Executive order" means a document provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during the fueling of a motor vehicle at a facility, and which identifies the performance standards required for the system or system components.

(11) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank which provides fuel to the engine of that motor vehicle.

(12) "Facility representative" means a person employed at a facility with a Stage II vapor recovery system who has been trained to serve at that facility as prescribed in Section 7 [8] of this administrative regulation.

(13) "Functional test" means a test performed during the operation of the vapor recovery system or any of the system components to determine if a component is functioning correctly.

(14) "Gasoline" means any petroleum distillate or petroleum distillate and alcohol blend having a Reid vapor pressure of four (4.0)

pounds per square inch (twenty-seven and six-tenths (27.6) kilopascals) or greater which is used as a fuel for internal combustion engines.

(15) "Initial monthly throughput" means:

(a) For a facility which commenced construction before the classification date, the total gallons of gasoline dispensed during the months of operation in the twenty-four (24) months preceding the classification date divided by the number of months of operation during those twenty-four (24) months;

(b) For a facility which commenced construction on or after the classification date, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(16) "Initial test" means a test which is performed following completion of construction or modification to determine the capability of the facility to meet the requirements contained in Section 4 of this administrative regulation.

(17) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or functional testing.

(18) "Modification" or "modify" means the replacement, repair, or upgrade of seventy-five (75) percent or more of the facility's Stage II equipment. Determination of the percentage is based on the cost of a total system replacement at the time of modification.

(19) "Month" means calendar month.

(20) "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(21) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(22) "Owner or operator" means any person who owns, leases, operates, manages, supervises, or controls (directly or indirectly) a gasoline dispensing facility.

(23) "Person" has the meaning given it in KRS 224.01-010.

(24) "Registration date" means the date the owner or operator applies to the cabinet for the exemption provided in Section 3 of this administrative regulation.

(25) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases, as determined by ASTM Method D323-82, which is incorporated by reference in 401 KAR 50:015.

(26) "Stage II vapor recovery" means gasoline vapor recovery during the refueling of a motor vehicle from a stationary storage tank at a facility.

(27) "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the fueling of a motor vehicle at a facility by ninety-five (95) percent or more.

(28) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Section 2. Applicability. This administrative regulation shall apply to each gasoline dispensing facility located in a county or a portion of a county designated nonattainment for ozone, for any nonattainment classification except marginal, as defined in 401 KAR 51:010.

Section 3. Exemptions. (1) A facility commencing construction prior to the classification date and having an initial monthly throughput of 10,000 gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet within six (6) months after the

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classification date;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the classification date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the classification date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(2) A facility commencing construction on or after the classification date and having an initial monthly throughput of 10,000 gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet before the facility begins dispensing gasoline;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the registration date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the registration date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(3) If the average monthly throughput of an exempted facility exceeds 10,000 gallons, the facility shall cease to be exempted and the owner or operator shall comply with this administrative regulation within one (1) year ~~[six (6) months]~~ of the anniversary date on which the calculation was made.

Section 4. Permit Requirements. (1) A person shall not construct or modify a Stage II vapor recovery system unless a permit has been issued by the cabinet pursuant to 401 KAR 50:035.

(2) After the applicable compliance date in Section 5 of this administrative regulation, an owner or operator shall not transfer or allow the transfer of gasoline from a stationary storage tank at a gasoline dispensing facility into a motor vehicle fuel tank unless:

(a) A Stage II vapor recovery system is properly constructed and operated during the transfer;

(b) Coaxial hoses are used at the dispensers;

(c) The Stage II vapor recovery system contains no components that would impede the performance of the functional or compliance tests of the system; and

(d) One (1) of the following conditions is met:

1. An initial test as specified in Section 8 [9](1) of this administrative regulation has been passed and the cabinet has not denied the facility a permit to operate. The authority to operate pursuant to the initial test shall expire sixty (60) days after performance of the initial test, except as provided in Section 8 [9](2)(b) of this administrative regulation.

2. A compliance test as specified in Section 8 [9](2) of this administrative regulation has been passed and a complete application for a permit to operate has been submitted to the cabinet. The application shall be submitted within two (2) weeks of the compliance test date.

Section 5. Compliance Timetable. (1) The owner or operator of a facility to which this administrative regulation applies shall comply with this administrative regulation in the following manner:

(a) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput of 100,000 gallons or more shall comply within one (1) year of the classification date.

(b) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput between 10,000 and 100,000 gallons shall comply within two (2) years of the classification date.

(c) Facilities which commenced construction on or after November

15, 1990, and on or before the classification date, shall comply within six (6) months of the classification date.

(d) Facilities commencing construction after the classification date shall comply with this administrative regulation before they commence dispensing gasoline.

(2) A facility shall be considered to have met the compliance timetable if the initial test has been passed and submitted to the cabinet by the date prescribed in subsection (1) of this section. This shall not exempt a facility from the requirements of Section 4(2)(d)2 of this administrative regulation.

Section 6. Operating Requirements. The owner or operator shall maintain the Stage II vapor recovery system in accordance with the manufacturer's specifications and the criteria issued in the executive order of CARB or an equivalent authority approving the system. The owner or operator shall comply with the following:

(1) An owner or operator shall not dispense gasoline, or allow a person to dispense gasoline, using Stage II vapor recovery equipment containing a defect listed in this subsection. If a defect described in this subsection is discovered, the owner or operator shall post an "Out of Order" sign on the equipment and shall ensure that the equipment is rendered inoperable. The defects shall include:

(a) The absence or disconnection of any component that is part of the Stage II vapor recovery system;

(b) The use of equipment not in accord with the system certification;

(c) A vapor hose that is crimped or flattened so that:

1. The vapor passage is completely blocked; or

2. The pressure drop through the vapor hose is greater than two

(2) times the certification requirements;

(d) A nozzle boot that is torn in one (1) or more of the following ways:

1. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or

2. A hole more than one-half (1/2) inch in diameter; or

3. A slit more than one (1) inch in length;

(e) A faceplate or flexible cone on the boot of a nozzle that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

(f) A malfunctioning nozzle shutoff mechanism;

(g) Vapor return lines, including components such as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

(h) An inoperative vapor processing unit;

(i) An inoperative vacuum producing device;

(j) An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

(k) Leaks; or

(l) An equipment defect or changes to a component of the system which the cabinet determines will substantially impair the control efficiency of the system.

(2) A defect in a component of the Stage II vapor recovery system which is not listed in subsection (1) of this section may remain in operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(3) If the cabinet identifies a defect specified in subsection (1) of this section, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been authorized for use by the cabinet.

(4) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(5) The owner or operator shall ensure that operating instructions

for dispensing fuel are displayed on or near each dispenser, in a print type and size that is easily readable, which include[] at a minimum:

- (a) A clear description of how to use the equipment;
- (b) A warning not to attempt continued dispensing of fuel after automatic shutoff; and
- (c) A telephone number established by the cabinet to report problems experienced with equipment.

~~[Section 7. Requirements for Persons Constructing or Modifying Stage II Vapor Recovery Systems. (1) An owner or operator shall not cause or allow the construction or modification of a Stage II vapor recovery system by a person unless:~~

- ~~(a) The person is a registered engineer or employs a person exercising control over the construction or modification who is a registered engineer; or~~
- ~~(b) The person has been trained at a seminar given by the manufacturer or distributor of the vapor recovery equipment that is being constructed or modified (or a similar Stage II vapor recovery system), or employs a person who will exercise control over the construction or modification who is so trained.~~

~~(2) The person who constructs or modifies a Stage II vapor recovery system at a facility shall conduct the initial and compliance tests prescribed in Section 9 of this administrative regulation. If the person who constructs or modifies a Stage II vapor recovery system at a facility is unable to conduct the initial or compliance test, the owner or operator shall provide a person to conduct the test who is qualified according to the requirements of subsection (1) of this section.]~~

Section 7. [8.] Training of Facility Employees. (1) The owner or operator shall ensure that he or at least one (1) person at the facility is trained to operate the vapor recovery system, and that the training includes the following topics:

- (a) Purposes and effects of the Stage II vapor recovery program;
- (b) Operation and functioning of the vapor recovery system at that facility;
- (c) Start-up and shut-down procedures, including daily equipment inspections;
- (d) How to repair or replace faulty equipment without voiding the equipment warranties;
- (e) Procedures for posting and removing "Out of Service" signs;
- (f) The executive orders of CARB or of the equivalent authority certifying the system, the range of components certified for use in the system, and the requirements placed on the owner or operator by CARB or the equivalent authority;
- (g) Maintenance schedules and requirements for the system and its components;
- (h) Equipment warranties; and
- (i) Equipment manufacturer and rebuilder contacts, including names, addresses, and phone numbers, for parts and service.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training is provided by training manuals, they shall be kept at the facility and made available to the cabinet upon request.

(3) The owner or operator shall ensure that the training includes a practical demonstration wherein the facility representative demonstrates an ability to operate and inspect the equipment and to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system. The cabinet may require that this demonstration be performed and witnessed by the cabinet as a condition for compliance.

(4) The owner or operator shall obtain a Facility Representative

Training Certificate, DEP-6049, which is incorporated by reference in Section 10 [44] of this administrative regulation, from the cabinet for each trained facility representative in his employ. This form shall be:

- (a) Signed by the facility representative, certifying that he has been trained as prescribed in subsection (2) of this section;
- (b) Signed by the owner or operator, certifying that he has witnessed a practical demonstration performed by the facility representative as prescribed in subsection (3) of this section; and
- (c) Notarized.

(5) The owner or operator shall maintain a recorded history of all trained facility representatives which includes the following:

(a) The name of the facility representative and the date he received the training certificate required in subsection (4) of this section; and

(b) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than ninety (90) consecutive days without a trained facility representative.

Section 8. [9.] Test Methods and Procedures. As provided in Section 4(2)(d) of this administrative regulation and at other times as may be required by the cabinet, the owner or operator shall conduct tests according to this section.

(1) Initial test. Upon completion of the construction or modification of a Stage II vapor recovery system, the owner or operator may conduct an initial test as prescribed in subsection (3) of this section as appropriate for the system. At least two (2) working days before the tests are conducted, the owner or operator shall inform the appropriate regional office of the division of the date the initial test will be conducted.

(2) Compliance test. After the facility has completed construction, the owner or operator shall conduct a compliance test as prescribed in subsection (3) of this section.

(a) After completion of construction the owner or operator shall contact the appropriate regional office to schedule a compliance test. The owner or operator shall deliver a written confirmation of the test date to the regional office at least five (5) working days before the test date. The confirmation letter shall name the person who will conduct the compliance test.

(b) The compliance test shall be conducted no more than sixty (60) days after construction is completed, except that the date for the compliance test may be delayed up to 180 days after construction is completed, if the cabinet deems the time extension necessary to witness the compliance test.

(c) If the facility fails the compliance test, the cabinet shall give the owner or operator thirty (30) days notice to correct the deficits, and a new date for the compliance test shall be set.

(3) Initial or compliance tests shall be conducted in accordance with the following test procedures as found in Appendix J of the EPA document, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, Appendices," which is incorporated by reference in Section 10 [44] of this administrative regulation, except that the cabinet may approve other test procedures approved by CARB or an equivalent authority and the U.S. EPA:

(a) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure.

(b) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs. Flow/Liquid Blockage Test Procedure. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser from which gasoline can be dispensed simultaneously.

(c) Bay Area Source Test Procedure ST-37, Liquid Removal Devices. This test applies only to systems using liquid removal devices.

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Section 9, [10-] Recordkeeping Requirements. (1) The owner or operator shall maintain at the facility the following records:

(a) All applicable permits and licenses required to operate the facility;

(b) The executive orders of CARB or the equivalent authority for the Stage II vapor recovery system;

(c) Names, addresses, and phone numbers of persons who construct or modify the Stage II system;

(d) Current Facility Representative Training Certificate; and

(e) Test results which verify that the vapor recovery system meets or exceeds the requirements of the tests noted in Section 8 [9] of this administrative regulation. The test results shall be dated, and the names, work addresses and phone numbers of the persons conducting the tests shall be listed.

(2) The following records shall be maintained at the facility for two (2) years:

(a) Maintenance records including any repaired or replacement parts and description of the problem;

(b) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order;

(c) Gasoline throughput records and a record of months of operation which will allow the average monthly gasoline throughput rate to be continuously determined;

(d) Inspection reports issued by the cabinet, kept in chronological order; and

(e) The facility representative record mandated in Section 7 [8](5) of this administrative regulation.

(3) These records shall be kept current and made available to the cabinet upon request.

Section 10, [11-] Reference Material. (1) Incorporation by reference. The following documents are incorporated by reference:

(a) U.S. Environmental Protection Agency, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA-450/3-91-022b, November 1991, Appendix J, Stage II Installation Test Methods, pages J.1 through J.5-8; available from the U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(b) DEP 6049, Facility Representative Training Certificate, November 1992.

(2) Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 11, [12-] Penalties. (1) An owner or operator who violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS Chapter 224.

(2) The cabinet may deny, suspend, revoke, or modify a permit to construct or a permit to operate a Stage II vapor recovery system due to repeated malfunctioning of the system or its components, or due to systemic problems in testing the system.

PHILLIP J. SHEPHERD, Secretary

JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: January 12, 1992

FILED WITH LRC: January 12, 1992 at 11 a.m.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:050. Definitions.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Facility" shall have the meaning in KRS 224.60-115(7);
 (16) "Federal regulation" shall have the meaning in KRS 224.60-115(8);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. GREGORY HIGDON, Chairman
 APPROVED BY AGENCY: January 4, 1993
 FILED WITH LRC: January 5, 1993 at 11 a.m.

**PETROLEUM STORAGE TANK ENVIRONMENTAL
 ASSURANCE FUND COMMISSION
 (Amended After Hearing)**

415 KAR 1:060. Financial responsibility account.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

certificate.

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

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

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

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

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet **immediately after** [within ~~twenty-four (24) hours of~~] the discovery of the release as required by **KRS 224.01-400** [401-KAR-42:060]. For the purpose of potential eligibility for the fund, in no event shall the report of the release be made to the cabinet more than thirty (30) days after discovery.

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

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

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

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

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

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

(a) Commercial or private insurance from a carrier within A.M.

best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The amount was paid due to a mistake, **error**, or inaccurate information in the claim submitted by the owner or operator or in an

invoice submitted by a contractor; or

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

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

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

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

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

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

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 5, 1993 at 11 a.m.

**PETROLEUM STORAGE TANK ENVIRONMENTAL
ASSURANCE FUND COMMISSION
(Amended After Hearing)**

415 KAR 1:070. Petroleum storage tank account.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of service.

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

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

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

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

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

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

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

- (a) The amount was paid due to an error of the commission; or
- (b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or
- (c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

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

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

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

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

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

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

Section 7. [8.] Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. [9.] Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

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

discovered ~~[unregistered]~~ tanks found during the performance of corrective **action** for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

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

Section 9. ~~[4-]~~ Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

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

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 5, 1993 at 11 a.m.

**PETROLEUM STORAGE TANK ENVIRONMENTAL
ASSURANCE FUND COMMISSION
(Amended After Hearing)**

415 KAR 1:080. Claims procedures.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

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

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

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

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

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

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

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

(5) Payment under the terms of the assistance agreement may be made when the eligible owner or operator submits **a claim form** ~~[original invoices of costs incurred under the terms of the approved bid]~~, and **a** ~~[the submittal of the]~~ certification by the contractor that the costs were consistent with the bid[,] and necessary to comply with the administrative regulations of the cabinet.

Section 2. ~~[4-]~~ Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

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

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

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

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

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

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

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

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

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

(5) The claim may be submitted with the application for an assistance agreement.

Section 3. **Bids from Contractors.** (1) **After July 14, 1993, an owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain bid proposals from at least three (3) contractors to be eligible for reimbursement or payment from the fund. The bid proposals shall be obtained prior to commencing the activity. The bid proposal shall set forth the unit costs for the performance of the activity, including, but not limited to, the costs of personnel, sampling, removal, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.**

(2) Copies of the bid proposals shall be submitted with an Application for Assistance Agreement.

Section 4. Signatures. (1) A claim form or an application for an assistance agreement shall be signed by an eligible owner or operator as follows:

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

(b) For a partnership, sole proprietorship or individual, by a

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general partner, the proprietor or individual respectively; or

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

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

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

Section 5. [4-] Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

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

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

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42 [415-KAR-1-110];

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

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

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

Section 6. [5-] Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

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

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

Section 7. [6-] Payment Procedures. (1) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in an assistance agreement.

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

Section 8. [7-] Eligible Costs. Payment for costs of corrective action shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

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

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

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

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

of the cabinet;

(e) Preparation of corrective action plans;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Loss of business, income or profits;

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

(f) Decreased property values for the facility;

(g) Facility improvements;

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

(i) Aesthetic improvements to the facility;

(j) Interest[e] on overdue accounts and loans;

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

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

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

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

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

(p) Contractor markup expenses for personnel costs;

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

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

Section 9. [8-] Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 10. [9-] Subrogation. Prior to making payment of a claim, the commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

C. GREGORY HIGDON, Chairman

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**PETROLEUM STORAGE TANK ENVIRONMENTAL
ASSURANCE FUND COMMISSION
(Amended After Hearing)**

415 KAR 1:090. Ranking system.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

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

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

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

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

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

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

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-581. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.

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

the commission shall consider the following factors:

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

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

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

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

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

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

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

(a) First, an individual, partnership or corporation whose:

(a) average net income for the five (5) year period is less than \$50,000 or a public entity with an annual revenue and income of less than \$100,000 [shall be given first priority];

(b) Second, an individual, partnership, a corporation whose average net income for the [last] five (5) year period [s] is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000 [shall be given second priority];

(c) Third, an individual, partnership or corporation average net income for the [last] five (5) year period [s] is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000 [shall be given third priority].

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

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

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

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

Section 5. The commission shall have the right to recover the

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amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

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

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

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

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

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

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

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

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

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

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

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

(10)(a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 [a-political-subdivision-of-the-state, a-commission, or a municipality] shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 3(2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

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

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: January 4, 1993

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PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:120. Hearings.

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

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130(2)(c) requires the commission to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Requests for Hearing. (1) Any person aggrieved by a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The ~~[hearing may be conducted by the]~~ commission, the executive director or a person ~~[hearing officer]~~ designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had ~~[such]~~ notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(2) The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought. The standard to meet the burden is a preponderance of the evidence.

Section 3. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation agreed settlement, consent order, or default for nonappearance.

Section 4. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-

examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts[~~or to set up other procedures for taking evidence including but not limited to the use of mechanical recording devices for recording the testimony~~]. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or issue its own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

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

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the courts of jurisdiction.

C. GREGORY HIGDON, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 5, 1993 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(Amended After Hearing)

704 KAR 7:110. School council policy rejection; appeal procedure.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: School council policies in the areas set out in KRS 160.345(2)(j)(1-8), the school-based decision

making statute, are generally not subject to approval or rejection by a board of education. This administrative regulation is necessary to establish standards in those limited circumstances in which a board of education rejects a school council policy in one (1) of the eight (8) areas. The function of this administrative regulation is to establish standards and a process for policy rejection and provides for an appeal process.

Section 1. To the extent school council policies are outside the areas set out in KRS 160.345(2)(j)(1-8), they shall be consistent with district board policies, unless otherwise agreed to by the district board of education and the school council.

Section 2. The school council shall make decisions in the areas set out in KRS 160.345(2)(j)(1-8). The district board of education may reject a school council policy in one (1) of these areas only to the extent it is inconsistent with:

- (1) State or federal statutes or regulations (if a waiver is not applicable);
- (2) Concerns for health and safety;
- (c) Concerns for liability;
- (4) Available financial resources; or
- (5) Contractual obligations to personnel and other providers of goods and services.

Section 3. If the local board of education rejects a policy pursuant to Section 2 of this administrative regulation, the board shall return the policy to the school council for reconsideration. The board shall provide a specific written explanation of the alleged inconsistency accompanied by the policy document and a copy of the law, contract, or other provision upon which the district board's action is based.

Section 4. If the board of education and the school council have exhausted all possibilities toward resolution and are unable to resolve the dispute regarding the school council policy, the board or the school council may submit the matter in writing to the State Board for Elementary and Secondary Education [commissioner of education] for resolution. Upon receipt of the written request for resolution, the state board [commissioner] shall:

- (1) Provide a copy of the written request to the other party to the dispute;
- (2) Provide notice to the other party to the dispute that it may file with the state board [department] an explanation of its position in the matter within twenty (20) days after receipt of the notice; and
- (3) Make its binding decision on the appeal, after the deadline for the filing of the response to the appeal has expired. As an option, the decision may include a remand of the matter to the local board of education and school council for further attempts at resolution. [Issue his binding decision within thirty (30) days after the deadline for the filing of the response to the appeal.]

~~[Section 5. Within thirty (30) days after issuance of the commissioner's decision, the local board or school council may file a written appeal of the decision with the State Board for Elementary and Secondary Education. The state board shall:~~

- ~~(1) Provide a copy of the appeal to the other party to the dispute;~~
- ~~(2) Provide notice to the other party to the dispute that it may file with the state board a response to the appeal within twenty (20) days after receipt of the notice; and~~
- ~~(3) Make its binding decision on the appeal at its next regularly scheduled meeting.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

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Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

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WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amended After Hearing)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and [-] sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose. [-and] The general criteria in this administrative regulation set forth [herein] covers the regulatory policies.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment [handicap] to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

Section 2. Comparable Benefits. Except as provided in this section, the agency shall fully consider any comparable benefits available under any other program to an individual [with a handicap] or to members of that individual's family, to meet, in whole or in part, the cost of vocational rehabilitation services.

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Evaluation of rehabilitation potential;

(b) Counseling, guidance and referral;

(c) Vocational and other training services including personal and vocational adjustment training, books, tools, and other training materials that are not provided in institutions of higher education;

(d) Placement;

(e) Rehabilitation engineering services;

(f) Services listed in paragraphs (a) through (e) of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall not be required if such consideration would place the applicant or client at extreme medical risk **or prior to the provision of such services if an immediate job placement would be lost due to a delay in the provision of such comparable benefits.** A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(3) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered under such programs, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) If the individual [who has a handicap] refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released.

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

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(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Employability Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant meets the reasonable expectation criteria of eligibility.

Section 5. Employees' Application for Services. (1) In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest, an applicant who is an agency employee and the agency shall adhere to

the following procedures when such an employee wishes to apply for rehabilitation services:

(a) The employee shall advise the regional administrator of the intent to apply.

(b) The regional administrator shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee-applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.

Section 6. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the branch manager. The branch manager shall assign a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.

Section 8. Legal Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services.

Section 9. Maintenance. The agency shall not subsidize a client's home.

Section 10. Payment Rates for Purchased Services. (1) The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.

(2) The department shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant or client or a family member any payment for services unless the amount of such charge or payment is previously known to and, where applicable, approved by the agency.

(3) The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee for service basis.

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency with the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If particular procedure or mode of treatment is not available in

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state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The agency shall not pay for job placement services from a private for profit employment or placement agency.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and attendant care shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.

Section 14. Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.

(b) If the attending physician feels the prognosis is guarded, the agency staff shall request a letter indicating the client's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be served.

Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.

Section 16. Second Opinions. The agency may seek a second opinion from a qualified practitioner before determining the eligibility of an applicant or before authorizing services for a client.

Section 17. Self-employment Enterprises. (1) The following shall be met prior to planning for self-employment for clients of the agency:

(a) Clients shall agree to undergo appropriate evaluation to determine work potential, including mental and physical abilities, and interests, abilities, aptitudes, personality traits and other pertinent characteristics.

(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.

(c) Clients shall demonstrate that they can work with minimal or no supervision.

(d) The agency may require clients to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(e) Clients shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.

(f) The agency may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any agency purchased equipment expire.

(2) The Director of Field Services or a designee may approve

proposed self-employment enterprises requiring expenditures in excess of \$5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;

2. Applicability of statewideness; and

3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.

(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation).

Section 18. Sex Change. Agency funds shall not be used to pay for sex change surgery.

Section 19. Sheltered Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) ~~thirty-five (35)~~ ~~twenty-five (25)~~ percent production of a nondisabled ~~nonhandicapped~~ worker.

Section 20. Supported Employment. Supported employment services exceeding \$3500 per client served in individual placements and \$1750 per client served in group placements shall require approval of the Director of Support Services or a designee.

Section 21. Tools and Equipment. The agency may recover tools, equipment, and supplies if the client ceases to use the equipment for the pursuit and practice intended or upon the death of the client.

Section 22. Training. (1) Postsecondary training may be provided for clients pursuant to this section.

(a) Tuition and initial registration fees provided to the training institution of the client's choice shall not exceed those of the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation. The Director of Field Services or a designee may make exceptions only when it is clearly demonstrated that such exceptions are financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.

(b) The agency may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(c) Other agency approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be utilized for clients who are deaf if the total cost of attendance does not exceed the total cost of provision of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation.

(d) Institutional training shall be purchased only from those schools that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all state and federal requirements applicable to their use by the agency.

(e) Training shall be provided only to the entrance level of the vocational objective.

(f) Clients planning to attend a postsecondary institution in Kentucky shall file the Kentucky Financial Aid Form and other need analysis forms as required by the school.

(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.

(h) Clients shall maintain a "C" average. The agency may

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continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, attendant care, maintenance, and transportation.

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.

(k) Cost of attendant services for clients in training shall not exceed the cost of attendant services in the agency sponsored attendant care program at the University of Kentucky.

(2) On-the-job training may be provided pursuant to this subsection.

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration.

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration.

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training.

(d) The client in on-the-job training shall be paid the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to the provision of this subsection.

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.

Section 23. Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the agency.

Section 24. Vehicle Purchase. The agency shall not purchase vehicles except when the occupation of the client will require a

vehicle as occupational equipment.

Section 25. Visual Impairments. (1) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients with a secondary disability of visual impairment may be served only if another impairment, other than visual, poses the more substantial impediment [handicap] to employment. The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: January 5, 1993

FILED WITH LRC: January 5, 1993 at 11 a.m.

WORKERS' COMPENSATION BOARD Department of Workers' Claims (Amended After Hearing)

803 KAR 25:095. Statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.430, 342.735

NECESSITY AND FUNCTION: KRS 342.260 permits the Workers' Compensation Board to promulgate regulations not inconsistent with KRS Chapters 13A or 342 for carrying out the provisions of the Workers' Compensation Act, and KRS 342.430 requires the board to prepare and furnish forms necessary for the efficient administration of the Workers' Compensation Act. KRS 342.735 requires the board to establish regulations to expedite the payment of medical expense benefits. KRS 342.020 requires an employer, or insurer on behalf of the employer, to make all payments for medical services within thirty (30) days of receipt of a "statement for services." The function of this administrative regulation is to define what constitutes a "statement of services" requiring payment or challenge within thirty (30) days under KRS 342.020. Balance billing of employees is prohibited since all payments required for treatment under KRS 342.020 are to be made by employers or insurance carriers.

Section 1. Definitions. (1) "Statement for services" means, for the purposes of KRS 342.020(1), a completed Form HCFA 1500 or in the case of a hospital a completed Form UB-82, or successors to such forms prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached.

(2) "Kentucky Workers' Compensation Medical Provider's Certification" means a certification signed by the provider of medical services or supplies having the following content:

KENTUCKY WORKERS' COMPENSATION MEDICAL PROVIDER'S CERTIFICATION

The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82 or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies or appliance(s) for which payment is

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sought were reasonably required as a result of the patient's having suffered a work-related injury or occupational disease.

Medical Provider _____

Date _____

Section 2. Payment or Challenge of Statements for Services. (1) Payment to a provider of medical services or a challenge to the compensability of medical services under the Kentucky Workers' Compensation Act shall not be required, and the thirty (30) day payment period of KRS 342.020 shall not commence to run:

(a) Until the employer or its payment obligor has received a substantially complete statement for services including the Kentucky Workers' Compensation Medical Provider's Certification;

(b) ~~During such period as the employee refuses to execute the medical information release required by KRS 342.020(4);~~

~~(e)~~ During such period as a medical provider fails to respond to a reasonable information request served by the employer or its medical payment obligor under KRS 342.020(4);

(c) [(e)] During such period as the employee's designated physician fails to provide a treatment plan when required by 803 KAR 25:096.

(2) In the event payment of a statement for services is delayed by the occurrence of any of the events set forth in subsection (1) of this section, the employer or its medical payment obligor is granted twenty (20) days after the receipt of a substantially complete statement for services, medical information release, response to a reasonable request for information, or a "treatment plan" as defined in 803 KAR 25:096 in which to either make payment or file a Request to Resolve Medical Fee Dispute (Form 112).

(3) Should the employer or its medical payment obligor fail to make payment by reason of the occurrence of any of the events of subsection (1) of this section, written notice setting forth the reason for nonpayment shall be promptly sent by mail to the medical provider and employee.

(4) If the medical provider renders a statement for services containing charges in excess of those provided in an applicable fee schedule adopted by the board, the employer or its medical payment obligor may make payment in the scheduled amount and serve written notice to the medical provider of the reason for refusing to pay a greater amount. The notice shall include a specific explanation of the manner in which a fee schedule was applied to reduce the charge contained in the statement for services. The medical provider may dispute such payment in accordance with 803 KAR 25:012, provided that the request to resolve medical fee dispute is filed within twenty (20) days of receipt of a written notice of refusal to pay the full amount charged.

Section 3. Balance Billing. (1) No provider of workers' compensation medical services or treatment, or agent, servant, employee, assignee, employer or independent contractor acting on behalf of any workers' compensation medical provider shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge for services covered by KRS 342.020 in excess of that provided by a fee schedule adopted by the board, nor cause the credit of any workers' compensation patient to be impaired by reason of the patient's failure or refusal to pay the excess charge.

(2) If only a portion of the charges contained on a statement for services is reasonably disputed by an employer or medical payment obligor, the balance upon which there is no dispute shall be paid in a timely manner as provided in KRS 342.020.

Section 4. Miscellaneous. (1) The Kentucky Workers' Compensation Medical Provider's Certification may be executed on behalf of the provider of medical services or supplies by any employee or agent who is authorized to execute billing forms UB-82 or HCFA 1500 for that provider.

(2) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers or their agents may furnish reasonable grounds for the belief that the medical services, supplies or appliances were reasonably required for a work-related injury or occupational disease.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 4, 1993 at 4 p.m.

WORKERS' COMPENSATION BOARD Department of Workers' Claims (Amended After Hearing)

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of this administrative regulation is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months.

(b) Medical treatment that in fact continues for a period of more than three (3) months.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results.

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. As soon as practicable after receiving notice of the occurrence of a work-related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers'

Claims.

Section 3. Employee Selection of Physician. (1) **Except for emergency care**, all treatment for a work related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician." The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1) time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's prior written consent. Such consent shall not be unreasonably withheld.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work related injury or disease an employee has been placed under long-term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include manipulations, adjustments, electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding **sixty (60) [thirty-(30)]** days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; the time frame in which such treatment shall continue; and a plan by which such treatment shall terminate in the absence of improvement in the physical condition of the employee.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic

modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Workers' Compensation Physician Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this regulation by reference.

(2) Information available. Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 4, 1993 at 4 p.m.

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

905 KAR 8:230. Adult day care center certification.

RELATES TO: Acts 1992, c. 422, **Section 2 [p-1856-1858]**

STATUTORY AUTHORITY: KRS 194.050, 205.204(2), Acts 1992, c. 422, Section 2[~~p-1858~~]

NECESSITY AND FUNCTION: Senate Bill 198, enacted during the 1992 General Assembly, requires the Cabinet for Human Resources to establish standards for the safety, health and treatment of clients receiving services in adult day care centers in Kentucky, and establish criteria for the certification of these centers. The purpose of this administrative regulation is to set forth these standards and criteria.

Section 1. Definitions. (1) "Adult day care center" is governed by Acts 1992, c. 422[~~p-1858~~].

(2) "Cabinet" is governed by KRS 205.010(1).

(3) "Commissioner" means the Commissioner for the Department for Social Services.

(4) "Department" means the Department for Social Services.

(5) "Experienced" means a person with six (6) months' professional work history with adults.

(6) "Nutrient dense snack" means a snack that contains a high

proportion of nutrients in comparison to the number of calories.

(7) "Socialization" means the act of participating in a social group.

Section 2. Certification of Adult Day Care Centers. Adult day care centers ~~as defined in Acts 1992, c. 422, p. 1856-1858,~~ shall be certified by the cabinet. Authorized representatives of the department **shall** have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of complaints.

(1) Application for certification shall be made by filing a DSS-1284 Application for Adult Day Center Certification, herein incorporated by reference, with the Cabinet for Human Resources, Department for Social Services, Division of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Renewal of certification shall be made biennially. A renewal application shall be submitted prior to the expiration date of the current certification.

(3) Compliance with the health, safety and treatment standards established in this administrative regulation shall be documented on the DSS-1283 Adult Day Care Certification Check List, herein incorporated by reference. Documented compliance shall be confirmed by unannounced inspections by the department.

(4) Regulatory violations identified during inspections shall be transmitted in writing to the facility. The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days.

(a) The plan shall specify the dates by which each of the violations shall be corrected.

(b) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.

(c) If the plan is unacceptable, the reasons shall be specified. The facility shall modify or amend the plan and resubmit within ten (10) days.

(5) The commissioner may deny or revoke certification if the health, safety or security of clients is in danger or for failure to meet the standards of this administrative regulation after the expiration of a period not to exceed sixty (60) days from the date of the first official notice that standards have not been met. If certification is revoked, the applicant shall not reapply for at least one (1) year from the designated date of closure established by the cabinet.

(6) If certification has been denied or revoked, the applicant shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within thirty (30) days after receiving the notice of the action of the commissioner.

(7) Upon receipt of the request for a hearing, the commissioner or his representative shall notify the applicant in writing within fifteen (15) days of the time and place of the hearing. The commissioner shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(8) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. The applicant shall be notified in writing of the decision of the hearing officer.

(9) If certification denial or revocation is upheld, the Commissioner of the Department for Social Services' notification shall specify the date by which the center shall close and the applicant shall be notified in writing.

(10) A center may appeal a final decision to the circuit court within thirty (30) days of the decision.

Section 3. Responsibilities of the Service Provider. (1) Adult day care centers shall meet the following general requirements:

(a) Program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services; and

(b) Services shall be provided in a safe manner.

(2) The service provider shall meet the following program

requirements:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 5 of this administrative regulation;

(c) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests;

(d) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(e) Post a monthly calendar of planned activities and available services in a conspicuous place. Calendars shall be maintained for one (1) year for monitoring purposes;

(f) Provide assistance, when necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(g) Provide a meal that includes a food from each of the four (4) basic food groups, if the program is in operation during a normal meal hour. Therapeutic diets shall be available in accordance with a physician's order;

(h) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(i) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for one (1) year for monitoring purposes;

(j) Provide first aid and make arrangements for medical care with the participant's physician or hospital for accidents or medical emergencies; and

(k) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition.

(l) Comply with provisions of 905 KAR 8:220, Section 11 for self-administration of medications.

(m) Written complaint procedures to register complaints shall:

1. Include the address and phone number of the Division of Aging Services;
2. Be posted in a conspicuous place; and
3. Be provided to each participant.

Section 4. Facility Requirements. Certified adult day care providers shall:

(1) Locate, design and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with disabilities;

(2) Provide space and arrangements of furnishings to allow:

- (a) Adequate client movement;
- (b) Program activities;
- (c) Food service; and
- (d) Socialization;

(3) Provide private office space to permit individual counseling and confidential maintenance of records;

(4) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;

(5) Provide covered leak proof garbage disposal units for the kitchen;

(6) Equip each center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet and wash basin for each ten (10) participants;

(b) Easy accessibility to the disabled;

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required; and

(d) Bathroom facilities shall:

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1. Be cleaned and sanitized daily;
2. Contain hot and cold running water, mirror, soap and paper towels or electric hand dryers; and
3. Contain leak proof garbage disposal units emptied and cleaned daily;
- (7) Comply with applicable local housing and health codes;
- (8) Comply with local zoning requirements;
- (9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;
- (10) Maintain fully operational fire extinguisher with initial and annually updated inspection tags;
- (11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;
- (12) Provide identifiable space during hours of operation for participants in need of a more private environment or rest area;
- (13) Provide separate identifiable space during operational hours, if colocated in a facility housing other services.

Section 5. Program Staff. (1) Staffing requirements for certified centers shall include:

(a) Trained and experienced staff shall be present each day of operation;

(b) Staffing ratios shall be one (1) staff for each five (5) participants;

(c) There shall be at least two (2) responsible persons, one (1) of whom shall be a paid staff member, at the center at times when there is more than one (1) participant in attendance;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(2) Staff qualifications for programs shall be as follows:

(a) Directors of centers shall meet one (1) of the following requirements:

1. A trained social worker possessing:

a. A minimum of a bachelor's degree in social work or a related field and two (2) years' professional experience; or

b. A master's degree in social work and six (6) months' professional experience; **[or]**

2. A registered or practical nurse licensed in Kentucky with two (2) years professional experience; **or**

3. An individual at least twenty-one (21) years of age having:

a. A high school diploma or GED certificate;

b. Sixty (60) semester hours of professional education in social services, health or gerontology; and

c. Two (2) years' professional experience;

d. Professional experience shall substitute for professional education on a year-for-year basis.

(b) Staff and volunteers with ongoing client contact shall submit evidence of tuberculosis testing as governed by 902 KAR 20:200:

1. Within one (1) year prior to employment; or

2. During the first week of employment; and

3. Annually thereafter;

4. Evidence of testing shall be maintained in the personnel file.

(c) Staff or volunteers contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted. A physician's statement shall be required for return to work.

(3) Training of staff shall be provided by appropriate qualified professionals as follows:

(a) Within one (1) month of employment, paid and volunteer personnel shall receive **a minimum of six (6) hours** orientation to the center including:

1. Program objectives;

2. Center policies and procedures;

3. Health, sanitation, emergency and safety codes and procedures;

4. Client confidentiality; and

5. Personnel policies and procedures;

6. Policies and procedures shall be explained verbally and

provided in writing.

(b) Within three (3) months of employment, personnel shall be provided **a minimum of thirty-four (34) hours** basic training that includes:

1. The aging process;

2. Interpersonal communications;

3. Personal care;

4. First aid;

5. Identifying and reporting health problems;

6. Stress management; **[and]**

7. Recognizing and reporting suspected adult abuse, neglect, or exploitation; **and**

8. Universal blood and body fluid precautions.

(c) Within one (1) month of employment, staff shall become certified in cardiopulmonary resuscitation (CPR) by the American Heart Association or the American Red Cross. There shall be at least one (1) currently certified staff member present whenever clients are at the center.

Section 6. Client Records. Certified adult day care centers shall maintain client records at the site. Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and shall include the recorder's title. Records shall include:

(1) Client registration information containing:

(a) Client name, address, age, and other identifying information;

(b) Primary caregiver;

(c) Emergency contact information regarding responsible party and personal physician;

(d) Behaviors of the client impacting on his care and treatment;

(e) Limitations in activities of daily living;

(f) Physical disabilities or conditions requiring specific modes of care; and

(g) Additional information supplied by the caregiver, family or staff necessary for the provision of comprehensive individualized care including a listing of the client's hobbies, interests and skills.

(2) An ongoing record, indicating changes in the client's:

1. Objectives and goals;

2. Progress;

3. Physical and mental conditions;

4. Behaviors;

5. Responses;

6. Attitudes;

7. Appetite; or

8. Other changes or observations noted by program staff.

(3) Client attendance records.

(4) Documentation of prescription medication, prescribed by a duly licensed physician, and nonprescription medication, authorized by a responsible party or guardian, self-administered by a client.

Section 7. Materials Incorporated by Reference. (1) Forms necessary for the implementation of adult day care certification are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner

LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: January 5, 1993

FILED WITH LRC: January 6, 1993 at noon

ADMINISTRATIVE REGISTER - 1810

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

907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396r

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. ~~[The following definitions shall be applicable to this administrative regulation unless the specific context dictates otherwise:]~~

(1) "Competency evaluation program" means the competency evaluation program required by 42 USC 1396r [Title XIX of the Social Security Act] for nurse aides employed by Medicaid [Title XIX] participating nursing facilities prior to October [July] 1, 1989, when the program is approved by the state in which the nursing facility is located.

(2) "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, registered dietitian, or licensed or certified social worker.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by 42 USC 1396r [Title XIX of the Social Security Act] to be in place for Medicaid [Title XIX] participating nursing facilities ~~[(skilled nursing or intermediate care)]~~, when the program is approved by the state in which the nursing facility is located.

(5) "State approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "[~~Kentucky Department for Medicaid Services~~] Nurse Aide Training Manual ~~[and Competency Evaluation Program]~~" revised November 1, 1992 ~~[(dated July 1989)]~~ which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

Section 2. General Requirements. A participating nursing facility shall not use nurse aides on or after October [January] 1, 1990 for more than four (4) months unless the nurse aide has completed the nurse aide training and competency evaluation program, or the competency program if the individual was used by the facility prior to October [July] 1, 1989 as a nurse aide, or is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility is required to provide and document (as specified in the state approved program

manual) twelve (12) ~~[six-(6)]~~ hours of ongoing staff development annually ~~[per quarter]~~ for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. The "basic course" of nurse aide training consists of a minimum of fifty-nine (59) ~~[forty-five-(45)]~~ classroom hours for theory and laboratory time and sixteen (16) ~~[thirty-(30)]~~ hours of clinical experience for a total of seventy-five (75) hours. Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content are shown in the manual for the state approved program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. The nurse aide training program may be conducted by means of a Department of Adult and Technical ~~[an Office of Vocational]~~ Education program, nursing facility program, community college or university program or a licensed proprietary education program. Each agency wishing to provide nurse aide training shall ~~[must]~~ request and receive approval of the agency's training program by the Department for Medicaid Services prior to operating the nurse aide training program in accordance with the criteria shown in the manual for the state approved program. After initial approval of the training program, ~~[the Department for Medicaid Services shall conduct an initial one (1) year postapproval review. After the one (1) year postapproval review,]~~ each program shall ~~[will]~~ be monitored as follows:

(1) Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the Division of Licensing and Regulation, Office of the Inspector General, during the regularly scheduled annual survey for compliance with conditions of participation.

(2) Approved nurse aide training programs conducted by the Department of Adult and Technical ~~[Office of Vocational]~~ Education shall be monitored on site by the Cabinet for Workforce Development monitoring system ~~[that office]~~ at least every two (2) years; a self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews will be compiled by the Department of Adult and Technical Education and forwarded to the Department for Medicaid Services on a quarterly basis.

(3) The Department for Medicaid Services shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the Department for Medicaid Services a self-evaluation in each year ~~[than an on-site review is not performed]~~.

Section 6. Termination of Nurse Aide Training Programs. The Department for Medicaid Services shall terminate from participation in the training program those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction. In addition, nurse aide training programs offered by or in a nursing facility shall not be approved if the facility falls within any of the prescribed clauses described in 42 USC 1396(r)(f)(2)(B)(iii)(I)(a), (b), and (c).

Section 7. Final Examination/Competency Evaluation. The Department of Adult and Technical Education ~~[Office of Vocational Education]~~ or other qualified entities as approved by the cabinet, shall be (by agreement with the Department for Medicaid Services) responsible for the final written or oral examination and the skills demonstration aspect of the competency evaluation.

Section 8. State Nurse Aide Registry. The Division of Licensing and Regulation, Office of the Inspector General shall (by agreement with the Department for Medicaid Services) be responsible for establishing and maintaining a registry of all nurse aides who have satisfactorily completed a nurse aide training and competency evaluation program or competency evaluation program or been

granted an exception. In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program , or the competency evaluation program, the registry shall include specific documented findings by the state of individual resident abuse or neglect or misappropriation of resident property by nurse aides listed in the registry (determined in accordance with statutory requirements shown in Section 1919(g) of the Social Security Act), and a brief statement (if any) by the nurse aide disputing the finding(s); a finding may be included on the registry only after the nurse aide has been provided at least ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations. In the case of an inquiry to the registry concerning an individual listed in the registry, any information disclosed concerning ~~[such]~~ a finding shall also include disclosure of any nurse aide statement of rebuttal in the registry relating to the finding or a clear and accurate summary of the ~~[such-a]~~ statement.

Section 9. Reciprocity. A nurse aide who has completed a nurse aide training and competency evaluation program in another state and is on that state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

- (1) The other state's registry shall ~~[must]~~ provide appropriate written documentation showing the individual is on the other state's registry;
- (2) An employment record shall ~~[must]~~ be provided to the Division of Licensing and Regulation sufficient to verify that the aide has been employed in a nursing home since the training and twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and
- (3) There shall ~~[must]~~ be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

Section 10. The manual incorporated by reference in this administrative regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: January 5, 1993

FILED WITH LRC: January 6, 1993 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 1993

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(Proposed Amendment)

12 KAR 1:005. Definitions.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To define terms used in the administration of the Kentucky Seed Law and regulations.

Section 1. Terms used in the administration of the seed law and regulations and not otherwise defined shall have the following meaning:

(1) The term "lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within recognized tolerances, for the factors which appear in the labeling.

(2) The term "kind" means one (1) or more related species or subspecies which singly or collectively is known by one (1) common name, for example, tall fescue, oats, red clover, and timothy.

(3) The term "variety" means a subdivision of a kind which is characterized by growth, yield, plant, fruit, seed or other characteristics, by which it can be differentiated from other plants of the same kind, for example, Compact oats, Kenland red clover, and Clair timothy.

(4) The term "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) Two (2) or more inbred lines.

(b) One (1) inbred or a single cross with an open-pollinated variety.

(c) Two (2) varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(5) The term "advertised" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this act.

(6) The term "approximate" as used in the Kentucky Seed Law shall mean within the applicable tolerances of the "Rules for Testing Seeds" of the Association of Official Seed Analysts published in 1970 and as subsequently amended by the Association of Official Seed Analysts [Analysis].

(7) The term "seedling" means a young plant, grown from seed, which is being offered for sale for transplanting purposes or for planting in the field.

(8) The term "finished plant" means a young plant, grown from a seed or seedling which is being offered for sale for planting in the field.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

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2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Otherwise, the law applies equally to all people.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:010. Sampling, analyzing, ~~and~~ testing, and ~~t~~ tolerances.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To prescribe the methods of sampling, analyzing, and testing seed, and the tolerances to be applied in the administration of the Kentucky Seed Law and regulations.

Section 1. The methods of sampling, analyzing, testing and examining seed, and the tolerances to be applied in the administration of the Kentucky Seed Law and regulations shall be the same, except as otherwise stated, as prescribed in the current "Rules for Testing Seeds" of the Association of Official Seed Analysts, published in 1970 and as subsequently amended by the Association of Official Seed Analysts [Analysis].

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building,

University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: This is an editorial change. It corrects a mistake that exists in the present regulations. All who are covered by the law benefit from the removal of errors, inconsistencies or unclear wording.

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

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave a mistake in the official regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The law applies equally to all.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:025. Maximum weed seed content permitted.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To establish the maximum amount of weed seed that may be present in agricultural seed sold in Kentucky.

Section 1. No agricultural seed ~~[, except Striate lespedeza, Korean lespedeza, and mixtures of same,]~~ containing more than two (2) percent weed seed by weight, including noxious-weed seed, shall be sold, exposed, or offered for sale in Kentucky ~~[unless special permission has been granted by the director. Striate lespedeza, Korean lespedeza, and mixtures of same may contain three (3) percent weed seed, including noxious-weed seed].~~

~~[Section 2. Seed containing weed seed in excess of two (2) percent by weight (three (3) percent for Striate lespedeza, Korean lespedeza, and mixtures of same) including noxious weed seed, shall carry a special label or tag as prescribed by the director.]~~

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: Persons selling or purchasing lespedeza seed. Change removes an exception to the law that is no longer needed. There will be no impact because lespedeza seed containing over 2% weed seed no longer is encountered in Kentucky as it was when the regulation was written in 1981.

(a) Direct and indirect costs or savings to those affected: Persons selling or purchasing lespedeza seed.

1. First year: No cost effects.

2. Continuing costs or savings: No cost effects.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The change removes an exception to the law that is no longer needed. There will be no impact.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. Seed containing 3% weed seed is no longer being offered for sale in Kentucky.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave an unnecessary exception to the law in the official regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The law applies equally to all.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:055. Identification of seed or seedlings or finished plants not for sale.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To require identification of seed in storage; in, or consigned to, a seed cleaning or processing plant, but not offered for sale; and to require identification of all seedlings or finished plants in locations where only a portion of the seedlings or finished plants are to be sold.

Section 1. Any lot of seed [in storage;] in[,] or consigned to[,] a seed cleaning or processing establishment for storage cleaning, processing, or any other purpose [-or for sale outside the state only;] shall be plainly identified showing the specific purpose for which it is held.

(2) If some seedlings or finished plants are for sale and others are not for sale in a greenhouse, nursery, or any other place, all seedlings or finished plants must be plainly identified showing the specific purpose for which they are being held.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by

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profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are

not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The law applies equally to all people.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:060. Manner of labeling seed, seedlings, or finished plants. [Labeling of seed distributed to wholesalers.]

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To prescribe the manner of labeling seed, seedlings, and finished plants distributed to wholesalers, retailers, and consumers.

Section 1. (1) After seed has been processed it must be labeled before distribution to any person, including a wholesaler. Each bag or bulk lot must be completely labeled when supplied to a retailer or consumer. Labeling of seed supplied to or owned by a wholesaler (one whose predominant business is to supply seed to other distributors rather than to consumers of seed) may be by a key tag or laboratory report accompanying the invoice, provided each bag or other container is clearly identified by a lot number stenciled on the container, or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.

(2) Tobacco seedlings or finished plants distributed to any person, including a wholesaler, must be labeled in the manner prescribed by Kentucky Seed Improvement Association regulations.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt

would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Otherwise, the law applies equally to all people.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:065. Lawn, turf mixtures; labeling.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To provide uniformity in labeling lawn and turf seed mixtures and to prescribe the label format for lawn and turf seed mixtures.

Sections 1. The label for seed mixtures for lawn and/or turf purposes in containers of more than one (1) ounce shall bear thereon:

(1) The word "mixed" or "mixture."

(2) The headings "fine-textured grasses" and "coarse kinds" and thereunder in tabular form in type no larger than the heading:

(a) Commonly accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of five (5) percent of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the classification under this regulation.

(b) The term "none" or "none claimed" shall be printed under the appropriate heading "fine-textured grass" or "coarse kinds" in the absence of an appropriate entry.

(c) For each agricultural seed named under paragraph (a) of this [the] subsection: the percentage by weight of pure seed; the percentage of germination exclusive of hard seed; the percentage of hard seed, if present; and the calendar month and year the germination tests were completed.

(3) The heading "other ingredients" and thereunder in conspicuous type no larger than the heading:

(a) The percentage by weight of all weed seeds.

(b) The percentage by weight of all agricultural seed other than those listed on the label as "fine-textured grasses" or "coarse kinds."

(c) The percentage by weight of inert matter.

(4) The name and number per pound of each kind of noxious-weed seed present.

(5) The name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within Kentucky.

(6) Lot number, or other identification.

Section 2. For purposes of labeling lawn and/or turf seed mixtures, "fine-textured grasses" shall include those kinds of varieties approved as "fine-textured grasses" by the Association of American Seed Control Officials at the Biennial Conference of said Association in 1961 and as subsequently amended by said Association after

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approval of the Joint Legislative Committee of AASCO, ASTA, AOSA, and AOSCA. All kinds or varieties not so designated as "fine-textured grasses" must be listed under the heading "coarse kinds." A list of the "fine-textured grasses" and "coarse kinds" may be obtained from the director or his agent.

Section 3. Tall Fescue - Orchardgrass Mixtures. (1) It is best for fescue - orchardgrass mixtures to sold in plain, unmarked bags with only a label for identification. Sometimes, however, seed of a lot is put into printed bags before the exact analysis is known. If mixtures are sold in bags printed with the words "Kentucky 31 Tall Fescue", seed tags attached to the bags must comply with the law in all respects. In addition, the words "AND ORCHARDGRASS MIXTURE" must be applied by stencil or on labels attached to the front (broad) side of the bag. Letters must be legible, at least one (1) inch high, and located no more than three (3) inches from the bottom of the "Kentucky 31 TALL FESCUE" letters to ensure that the buyer is aware that he or she is purchasing a mixture. If "Kentucky 31 TALL FESCUE" letters are printed on the back (broad side of the bag, then "AND ORCHARDGRASS MIXTURE" letters must be placed there as well. It is not necessary to alter the sides of the bag.

(2) Whenever seed is sold in printed bags, information on the bag must be in agreement with information on the tag. Although described in detail here for tall fescue/orchardgrass mixtures, the same principle applies to all mixtures and to seed of a single species being sold in bags printed as if the seed was a mixture.

C. ORAN LITTLE, Dean and Director

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: Persons selling or purchasing lawn or turf seed mixtures. Persons purchasing lawn or turf seed mixtures.

(a) Direct and indirect costs or savings to those affected: Persons selling lawn and turf mixtures.

1. First year: No effect. Adjustments have already been made.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): Regulation clarifies a policy that has been in effect since 1990. New suppliers of fescue/orchardgrass mixtures continually are being encountered. The regulation change will facilitate correct labeling of all bags that enter the state, eliminating the need for stop sale orders to get problem-lots properly labeled. Persons who buy lawn and turf mixtures - these people will benefit as with any "truth in labeling" regulation. Benefit will come because the

buyers will be better informed as to the quality of the product they are buying.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The change will reduce the number of stop sales now being made due to differences between seed tag and seed bag information on seed lots of grass seed mixtures. This will have a desirable effect.

1. First year:

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave the regulation unchanged and to rely on word-of-mouth communications to persons who sell turf and lawn seed in Kentucky. Making the policy a part of the regulations will be more effective.

(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. The law applies equally to all people.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:075. Types of labeling; tag label form.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To prescribe the types of labeling and the tag and label forms to be used in labeling seed.

Section 1. The requirements for labeling seed sold, exposed or offered for sale in the Commonwealth of Kentucky shall be accomplished by use of one (1) of the following types of labels:

(1) Printing the required information directly on the container. Such printing or label to be provided by the person labeling the seed after applying for and receipt of a permit.

(2) A tag, containing the required information, attached to the containers. Such tags to be provided by the person labeling the seed after applying for and receipt of a permit.

(3) A label containing the required information in the form of a tag [or gummed label] provided by the Division of Regulatory Services of the Kentucky Agricultural Experiment Station. These tags [labels] are made in three (3) forms. Form "A" is manila. It is to be used on unmixed alfalfas, clovers, and grasses. Form "B" is yellow. It is to be used on cereal, garden, and truck crop seed, including seed potatoes. Form "C" is green. It is to be used on seed mixtures. [A gummed label is for use on tobacco seed (except Kentucky-certified).]

C. ORAN LITTLE, Dean and Director

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PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 1993, five days prior to hearing, of their intent to attend. If no

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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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: None. A correction is being made in 12 KAR 1:075 to remove reference to labels for tobacco seed. Tobacco seed labels are no longer sold because all tobacco seed sold is required to be labeled with certification labels.

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

1. First year: No cost effects.

2. Continuing costs or savings: No cost effects.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The change removes wording from the regulation that is no longer needed. There will be no impact.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave unnecessary and misleading wording in regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The law applies equally to all.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:080. Use of own tags; permit, report.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To prescribe the method for obtaining a permit to use own tags or labels in lieu of official Kentucky tags, for obtaining a permit to transport tobacco seedlings or finished plants into Kentucky, and to provide the means of payment of inspection fee.

Section 1. Any person who distributes agricultural or vegetable seeds in the Commonwealth of Kentucky may apply to the director for a permit to use his own labeling, to report the quantity of seed sold and to pay the labeling and inspection fee on the basis of said report in lieu of tags, labels, or stamps purchased from the director. Any person who transports tobacco seedlings or finished plants from outside the Commonwealth of Kentucky into Kentucky must apply to

the director for a permit to do so. Permit holders must report the quantity of tobacco seedlings or finished plants sold, and pay the labeling and inspection fee on the basis of said report. The inspection fee paid by [such] permit holders shall be in accordance with the following schedule:

(1) Packages one (1) pound in weight and up to and including twenty-five (25) pounds in weight:

(a) Alfalfa, clovers, and grasses (including mixtures): four (4) cents per package;

(b) All other seeds: two (2) cents per package.

(2) Packages in excess of twenty-five (25) pounds in weight but not exceeding 100 pounds:

(a) Alfalfa, clovers, and grasses (including mixtures):

1. Packages twenty-six (26) to fifty (50) pounds in weight: eight (8) cents per package.

2. Packages fifty-one (51) to seventy-five (75) pounds in weight: ten (10) cents per package.

3. Packages seventy-six (76) to 100 pounds in weight: twelve (12) cents per package.

(b) All other seeds:

1. Packages twenty-six (26) to fifty (50) pounds in weight: four (4) cents per package.

2. Packages fifty-one (51) to seventy-five (75) pounds in weight: six (6) cents per package.

3. Packages seventy-six (76) to 100 pounds in weight: eight (8) cents per package.

(3) Packages in excess of 100 pounds and seed distributed in bulk: [Pounds distributed in bulk and in packages in excess of 100 pounds:]

(a) Alfalfa, clovers, and grasses (including mixtures): twelve (12) cents per cwt.

(b) All other seeds: eight (8) cents per cwt.

(4) Tobacco. Packages of tobacco seed one-twelfth (1/12) ounce in weight and more (except Kentucky certified): two (2) cents per package.

(5) Tobacco seedlings or finished plants. Tobacco seedlings or finished plants (except those certified in Kentucky) sold or delivered in Kentucky on or after March 1, 1993: twenty-five (25) cents per thousand seedlings.

Section 2. In making application for said permit the distributor shall agree to:

(1) Label the seed, tobacco seedlings, or finished plants with the information required by KRS 250.040 and regulations promulgated by the director.

(2) Keep such records as the director may consider necessary to indicate accurately the number and size of containers of each kind of agricultural and vegetable seed distributed, and the quantity of such seeds distributed in bulk, and the number of tobacco seedlings or finished plants distributed.

(3) Grant the director or his authorized representative permission to examine such records and verify the statement of quantity of seeds, tobacco seedlings or finished tobacco plants distributed.

(4) Report to the director on forms furnished by the director the quantity of agricultural and vegetable seeds, and of tobacco seedlings or finished plants sold during the period covered.

Section 3. The director may grant the permit if he determines that such a report of agricultural and vegetable seeds, and tobacco seedlings or finished plants will lead to efficient enforcement of the act. The report of sales shall be due and the inspection fees payable quarterly, on the 10th day of the month following the end of the quarter.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

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PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Seedlings from out of the state will also reflect the fee being paid by out-of-state suppliers. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in

their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Tiering also exists in the fact that only out-of-state suppliers are required to pay the 25 cent per 1000 seedling fee.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:085. Illegal labeling and sales.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To identify illegal acts in the labeling and sale of seed or of tobacco seedlings or finished plants.

Section 1. It is illegal for any person to sell, offer or expose for sale, seed[s], tobacco seedlings or finished tobacco plants not labeled to comply with, or otherwise not in compliance with, the Kentucky Seed Law and regulations promulgated thereunder, or to counterfeit

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the official label or to use a counterfeit in lieu of the official label, or to use the same label a second time.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Seedlings from out of the state will also reflect the fee being paid by out-of-state suppliers. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings

in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of this regulation will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Tiering also exists in the fact that only out-of-state suppliers are required to pay the 25 cent per thousand seedling fee.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:090. Stop sale orders.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To provide for a means of

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administrative action in the form of a "Stop Sale Order" against seed, tobacco seedlings, or finished tobacco plants found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law and regulations.

Section 1. A written, printed, or verbal (followed by a written or printed) stop sale order may be issued on any lot of seed or tobacco seedlings or finished plants found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or the director or his agent has reasonable cause to believe a lot of seed, tobacco seedlings or finished tobacco plants to be in violation of the Kentucky Seed Law and regulations pertaining thereto. Seed under a stop sale order may not be sold, exposed or offered for sale and may not be moved from the point where the stop sale was issued, until requirements of the Kentucky Seed Law and regulations have been met [complied with] and a release has been issued by the director or his agent. Because of their perishable nature, tobacco seedlings or finished plants under a stop sale order may be returned to the vendor before a final release has been obtained from the director.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Seedlings from out of the state will also reflect the fee being paid by out-of-state suppliers. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to

another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

- (a) Necessity of proposed regulation if in conflict:
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 (6) Any additional information or comments: None
 TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Tiering also exists in the fact that only out-of-state suppliers are required to pay the 25 cent per thousand seedling fee.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(Proposed Amendment)

12 KAR 1:095. Impounded seed, tobacco seedlings or finished tobacco plants.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To provide for the movement and storage of seed, tobacco seedlings or finished tobacco plants seized under authority of KRS 250.120.

Section 1. (1) Seed seized under KRS 250.120 may be moved and stored in a warehouse selected by the enforcement agent.

(2) Tobacco seedlings or finished plants seized under KRS 250.120 may be returned to the vendor or moved in a manner approved by the director.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection

costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Seedlings from out of the state will also reflect the fee being paid by out-of-state suppliers. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representa-

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tives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Tiering also exists in the fact that only out-of-state suppliers are required to pay the 25 cent per thousand seedling fee.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:100. Records.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To require keeping of records pertaining to seed, tobacco seedlings or finished tobacco plants subject to the Kentucky Seed Law and regulations and to specify what the records are to include.

Section 1. The person, firm, or corporation labeling seed, tobacco seedlings, or finished tobacco plants subject to this act shall keep for a period of two (2) years complete records of each lot of seed, tobacco seedlings, or finished tobacco plants handled and keep for one (1) year after final disposition of lot a file sample of each lot of seed handled. Such records shall include declarations, reports, analyses, tests, and examinations used as a basis for labeling the seed, and processing and shipping records.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who purchase tobacco seedlings for planting; (2) Kentucky seed companies or individuals who sell tobacco seedlings; (3) out-of-state growers or handlers of seedlings that are shipped to Kentucky for

sale; (4) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (5) the Kentucky Seed Improvement Association.

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

1. First year: (1) Savings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (2) Costs of seedlings will reflect certification and inspection costs. Seedlings from out of the state will also reflect the fee being paid by out-of-state suppliers. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (3)(a) Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (b) Costs of selling seedlings - 25 cents per 1000 seedlings - (payment to be made when submitting quarterly report required of all permit holders). Payments will be made to Regulatory Services Division, College of Agriculture, University of Kentucky for recovery of costs arising from enforcement of the new law. (4) Added expenses will be incurred, but will be offset by certification fees. (5) The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety. Since certification is on a cost-recovery basis, the tobacco seedlings program must operate on a self-supporting basis. Fees are set by the board of directors and are reviewed annually. No net cost, because of the need for cost recovery.

2. Continuing costs or savings: No change from costs or savings in first year.

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

(b) Reporting and paperwork requirements: (1) None. (2) Must maintain records and reference seedlings as required by the Kentucky Seed Improvement Association. (3) Must have seedlings certified in their own state. Must obtain a permit to sell seedlings in Kentucky, make quarterly reports of sales, and make payment of 25 cents for each 1000 seedlings sold. (4) None. (5) Must keep accurate records but is subject to no new reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were

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not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was change to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Tiering also exists in the fact that only out-of-state suppliers are required to pay the 25 cent per thousand seedling fee.

KENTUCKY AGRICULTURAL EXPERIMENT STATION (Proposed Amendment)

12 KAR 1:105. Schedule of charges.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.100

NECESSITY AND FUNCTION: To establish a schedule of charges for service tests, analysis, and examination of seed samples submitted by residents and nonresidents of Kentucky to the Seed Laboratory of the Kentucky Agricultural Experiment Station.

Section 1. Any person may submit to the Seed Laboratory of the Kentucky Agricultural Experiment Station samples of seed for analysis, test, and examination. The following service charges for such samples will be assessed. Nonresidents will be assessed an additional charge of two (2) dollars per sample. Any Kentucky citizen may submit one (1) sample per year for test free of charge provided that the sample is accompanied by a signed statement: "I certify that I have not previously submitted a sample for free test during the current calendar year (signature)."

(1) Schedule of charges for complete test, purity analysis and noxious weed seed examination only, and germination test only.

Table 1. Schedule of Charges for:

Kind of Seed	Complete Test* \$	Noxious Only** \$	Purity and Germination Only \$
Alfalfa	14.00 [6.00]	7.00 5.00	8.00 4.00
Bentgrass	16.00 [8.00]	12.00 6.00	8.00 4.00
Bermuda grass	16.00 [8.00]	12.00 6.00	8.00 4.00
Bluegrass	16.00 [8.00]	12.00 6.00	10.00 5.00
Bromegrass	16.00 [8.00]	12.00 6.00	8.00 4.00

Cane	11.00 [6.00]	5.00 5.00	7.00 4.00
Cereals	11.00 [6.00]	5.00 5.00	7.00 4.00
Clovers	14.00 [7.00]	7.00 5.00	8.00 4.00
Corn	14.00 [6.00]	7.00 5.00	8.00 4.00
Crown vetch	14.00 [6.00]	7.00 5.00	8.00 4.00
Fescue	15.00 [7.00]	8.00 5.00	8.00 4.00
Lespedeza	15.00 [8.00]	8.00 6.00	7.00 4.00
Lovegrass	16.00 [8.00]	12.00 7.00	8.00 6.00
Millet	11.00 [6.00]	5.00 5.00	7.00 4.00
Milo	11.00 [6.00]	5.00 5.00	7.00 4.00
Orchardgrass	18.00 [8.00]	11.00 6.00	8.00 6.00
Redtop	16.00 [8.00]	12.00 6.00	8.00 5.00
Ryegrass	18.00 [7.00]	6.00 6.00	8.00 5.00
Sorghum	11.00 [6.00]	5.00 5.00	7.00 4.00
Sorghum-Sudan grass	11.00 [6.00]	5.00 5.00	7.00 4.00
[Hybrid] Soybean	12.00 [6.00]	6.00 5.00	7.00 4.00
Sudan grass	11.00 [6.00]	5.00 5.00	7.00 4.00
Timothy	14.00 [7.00]	7.00 6.00	8.00 4.00
Tobacco	16.00 [8.00]	12.00 6.00	8.00 4.00
Vegetables	14.00 [7.00]	10.00 5.00	7.00 4.00
Vetch	11.00 [6.00]	5.00 5.00	7.00 4.00

Schedule of charges for mixtures: Add germination charge for each additional kind of seed in the mixture.

*Complete Test includes a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

**Purity and Noxious Only includes a purity analysis and a noxious weed seed examination (for Kentucky only).

(2) Schedule of charges for noxious weed seed examination only and for special tests:

(a) Noxious weed seed examination.

1. For Kentucky only - \$8 [4];

2. For all states - \$10 [5].

(b) Moisture test - \$8 [4].

(c) Seed count per pound - \$6 [4].

(d) Hypocotyl color test - \$12 [6].

(e) Vigor test.

1. Three (3) day growth rate - \$14 [3];

2. Accelerated aging (AA) - \$14 [7].

(f) Tetrazolium test - \$12.

(g) Phenol test of wheat - \$12.

(h) Peroxidase test of soybeans - \$12.

(i) Seed or plant tall Fescue Endophyte:

1. 1-50 specimens of same seed lot or uniquely identified group

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of plants: \$35;

2. 51-100 specimens of same seed lot or uniquely identified group of plants: \$60;

3. 101-150 specimens of same seed lot or uniquely identified group of plants: \$85.

(3) Additional information. Any reexamination of a sample to secure information not furnished on the original report, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, will be subject to a charge in proportion to the amount of analyst time [work] required.

Section 2. Charges for kinds not listed above will be according to other kinds of similar size.

Section 3. Uncleaned seed and low grade screenings will not be tested.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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 amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: People who have seed tested in the Kentucky State Seed Laboratory (Regulatory Services Division).

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

1. First year: Benefits will be in the form of better service (quicker turn-around time of samples) because of the greater capability of the laboratory to hire temporary help during peak work loads. Charges for testing will be more than the amounts now being charged that last were set in 1981. The new fees will enable recovery of increased personnel and testing material costs. New costs are well in line with charges being made by other seed laboratories.

2. Continuing costs or savings: Costs will remain the same during the foreseeable future.

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

(b) Reporting and paperwork requirements: People who have seed tested in the Kentucky State Seed Laboratory - none.

(2) Effects on the promulgating administrative body: Fees received after the fee increases will be used for salary and materials costs of service testing. Added income per year from fees is estimated to result in an increase of about \$20,000 per year. This added income will make it possible to improve services because of the increased ability to hire students and part-time workers during peak load periods.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave fees where they now are. The amount received does not cover costs of analysts' salaries or supplies.

(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. The law applies equally to all.

GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists (Proposed Amendment)

201 KAR 12:105. School districts.

RELATES TO: KRS 317A.060(1)(a)

STATUTORY AUTHORITY: KRS 317A.030(1), 317A.060(1)(a) [317A.050]

NECESSITY AND FUNCTION: The six (6) [seven-(7)] Congressional Districts provide an equal division for the location of beauty schools. The number of eight (8) per Congressional District would allow all districts to have an equal number of schools.

Section 1. To protect the public and implement the provisions of KRS Chapter 317A, the state is hereby divided into six (6) [seven-(7)] districts the same as the United States Congressional Districts and shall change when the Congressional Districts are properly changed. At all times these districts shall remain in conformity with these Congressional Districts.

(1) District 1. Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Marshall, Calloway, Livingston, Crittenden, Lyon, Trigg, Caldwell, Union, Webster, Hopkins, Christian, Henderson, McLean, Muhlenberg, Todd, Logan, Butler, [and] Ohio, Cumberland, Simpson, Allen, Monroe, Russell, Clinton, and Adair County excluding that precinct in District 2.

(2) District 2. Daviess, Warren, [Simpson, Allen,] Barren, Edmonson, Hart, Grayson, Hancock, Breckinridge, Meade, Hardin, Larue, Marion, Washington, Nelson, Bullitt, [and] Spencer, Green, Metcalf, Taylor, Casey, Adair County excluding those precincts in District 1, Lincoln County excluding those precincts in District 6, and Jefferson County excluding District 3.

(3) District 3. Louisville and Jefferson County precincts presently constituting United States Third Congressional District of Kentucky.

(4) District 4. [Jefferson County exclusive of District 3,] Oldham, Trimble, Carroll, Gallatin, Boone, Kenton, Campbell, Grant, Henry, Owen, [and] Pendleton, Shelby, Bracken, Robertson, Mason, Fleming, Lewis, Rowan, Greenup, Carter, Elliott, Boyd, Lawrence County excluding those precincts in District 5, and Nicholas County excluding those precincts in District 6.

(5) District 5. [Taylor, Greene, Metcalf, Monroe, Adair, Cumberland, Casey, Russell, Clinton, Lincoln,] Pulaski, Wayne, Rockcastle, McCreary, [Estill,] Lee, Jackson, Laurel, Whitley, Owsley, Clay, Knox, Bell, Leslie, Harlan, Menifee, Morgan, Johnson, Wolfe, Magoffin, Floyd, Pike, Breathitt, Knott, Letcher, Perry, Marion, and Lawrence County excluding those precincts in District 4. [Garrard, and Jessamine.]

(6) District 6. [Shelby,] Franklin, Scott, Woodford, Mercer, Boyle,

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Harrison, Bourbon, Fayette, Clark, [Bracken,] Anderson, Madison, Montgomery, Nicholas County excluding those precincts in District 4, Garrard, Jessamine, Powell, Estill, Bath, and Lincoln County excluding those precincts in District 2. [and Robertson.]

[(7) District 7. Fleming, Bath, Menifee, Wolfe, Lewis, Rowan, Morgan, Breathitt, Perry, Greenup, Carter, Elliott, Mageffin, Knott, Letcher, Boyd, Lawrence, Johnson, Floyd, Martin, Pike, Mason, and Powell.]

Section 2. For the protection of the public good and welfare, for the public's protection against misrepresentation, deceit or fraud in the teaching of beauty culture, a [no] new license for a school of cosmetology shall not be issued which would cause any district, as defined in Section 1 of this administrative regulation, to have more than eight (8) [such] schools of cosmetology.

Section 3. (1) [No] Schools of cosmetology presently existing and licensed or hereafter licensed, shall not be permitted to move or transfer from one district to another district, as defined in Section 1 of this administrative regulation, without application being made to and approval received from the board.

(2) [No] Schools of cosmetology presently existing and licensed, or hereafter licensed, shall not be permitted to move or transfer from one district to another district, as defined in Section 1 of this administrative regulation, if the [such] move or transfer would cause the [such] district to have more than eight (8) [such] schools of cosmetology as provided in Section 2 of this administrative regulation.

Section 4. [Nothing in the above] Sections 1 through 3 of this administrative regulation shall not be construed to prevent the issuance or the reissuance of a license to an existing beauty school.

Section 5. This administrative regulation controls the location of private schools only.

PAT WILSON GAISER, Chairman

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 13, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this amended administrative regulation will be held on Wednesday, February 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by February 19, 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. 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: There are no direct or indirect costs or savings to affected entities because this administrative regulation is amended to conform with the congressional redistricting. Any currently existing entity will remain in existence through sell or transfer of ownership.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There is no direct or indirect effect on the promulgating administrative body as the regulation is amended to conform with the congressional redistricting.

(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:

There are no anticipated effects on state and local revenues since the currently existing entities will remain in existence.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there is only one level of entity.

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

(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 as there was only one level of entity.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:010. Code of ethical conduct.

RELATES TO: KRS 321.351(1)(h) [321.350(6), (7)]

STATUTORY AUTHORITY: KRS 321.235 [321.240]

NECESSITY AND FUNCTION: KRS 321.351 [321.350(6)]

~~provides that the board may suspend or revoke a certificate of license for any gross negligence, incompetence or misconduct in the practice of veterinary medicine in this Commonwealth. KRS 321.350(7)]~~ provides for the suspension or revocation of a certificate of license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain acts or inaction which shall constitute [gross negligence or misconduct in the practice of veterinary medicine and likewise sets forth] a code of ethical conduct for each licensed practitioner.

Section 1. ~~A [The failure on the part of any] veterinarian shall [to] take sufficient [the] time and conduct the appropriate tests necessary to attempt to diagnose the condition of the patient [animal] which he is attempting to treat [shall constitute gross negligence, incompetence and misconduct].~~

Section 2. ~~A veterinarian shall bill accurately and truthfully for services rendered. [The continued failure of a veterinarian to treat the animal which he has undertaken to treat in a manner that a qualified veterinarian would use under the same or similar circumstance shall constitute gross negligence, incompetence and misconduct.]~~

Section 3. ~~[The failure of] A veterinarian shall [to] maintain adequate equipment to treat patients [animals] that he is called upon to treat in the practice of veterinary medicine [shall constitute gross negligence, incompetence and misconduct in the practice of veterinary medicine].~~

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Section 4. A veterinarian shall at all times maintain his service premises and all equipment thereon in a clean and sanitary condition. [All veterinary offices and clinics, including instruments and equipment contained therein, shall at all times be kept clean and free from any condition or surroundings that will make or tend to make said instruments and equipment unsanitary or unhygienic.]

Section 5. A veterinarian shall not issue a certificate of health unless he has personal knowledge through actual examination and appropriate testing of the animal that the animal meets the requirements for the issuance of the certificate. [Any veterinarian who misrepresents or misstates information on a health certificate or any other document relating to the sale, movement or transportation of animals, or who presigns health certificates or other related documents in order that they may be used by some other person or persons, is guilty of misconduct in the practice of veterinary medicine.]

Section 6. A veterinarian shall not in any way aid or abet the unlawful practice of veterinary medicine. [No veterinarian shall permit, encourage or aid any person or corporation to engage in the unauthorized and illegal practice of veterinary medicine.]

Section 7. A veterinarian shall not [be guilty of misconduct if he] sell[s] or offer[s] for sale medicine or [and] drugs at any place other than his office, clinic, [or] hospital, or other [at the] place where he is treating patients [animals] and the drug or [and] medicine shall [s will] be used in the treatment of said patient. A veterinarian may fill the prescription of another licensed veterinarian who has established a bona fide veterinarian-client-patient relationship in that case [animal].

Section 8. A veterinarian shall not engage in false, misleading, or deceptive advertising. [may advertise by any medium.]

(1) Advertisements shall not be false, misleading or fraudulent.

(2) Any representation that the veterinarian is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners and has furnished proof of such certification to the board, is prohibited.]

Section 9. A veterinarian shall not [it shall be improper for veterinarians to] write testimonials as to the virtue of drugs, medicines, remedies, or foods except to report the results of properly controlled experiments or clinical studies to interested veterinary organizations and associations.

Section 10. A [Every] veterinarian [engaging in the practice of veterinary medicine, veterinary surgery, and veterinary dentistry in this state] shall keep adequate and sufficient records of the examination and treatment of all patients [animals] examined and treated [so as to afford information relative to these matters to those persons entitled to see such information].

Section 11. A veterinarian shall not represent to the public that he is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners and has furnished proof of such certification to the board.

Section 12. A veterinarian shall not overutilize his practice. Overutilization of practice is practice which is excessive in quality or amount to the needs of the patient. Overutilization may be determined from such sources as the patient's history, subjective symptoms, objective findings, reasonable clinical judgment, or other relevant information.

Section 13. A veterinarian shall promptly notify the board of any disciplinary action taken against him, or the voluntary surrender of his license to practice veterinary medicine in another jurisdiction. He shall also notify the board of any conviction of a misdemeanor or felony in any jurisdiction.

Section 14. A veterinarian's practice shall conform to the currently accepted standards in the profession of veterinary medicine.

Section 15. A veterinarian shall not engage in any fraud, deceit, or misrepresentation in the procurement of a license to practice veterinary medicine.

Section 16. A veterinarian shall not practice veterinary medicine so as to endanger the health and welfare of his patients, or the public. A veterinarian shall not practice veterinary medicine if his ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance.

Section 17. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine.

Section 18. A veterinarian shall at all times conduct professional activities in conformity with all federal, state, and municipal laws, ordinances or regulations.

Section 19. A veterinarian shall comply with any request by the board to appear before the board or to provide information to the board.

Section 20. A veterinarian shall comply with any restrictions on his practice of veterinary medicine imposed by the board with the licensee's consent or after notice and hearing.

Section 21. A veterinarian shall notify the board of the suspension, revocation, or voluntary surrender of his federal Drug Enforcement Administration registration or his state controlled substances license.

Section 22. A veterinarian shall not represent conflicting interests except by the express consent of all the parties after full disclosure of all the facts. A conflict of interest shall include, but not be limited to, accepting a fee from a buyer to inspect an animal for soundness and accepting a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.

Section 23. A veterinarian shall not prescribe, dispense or administer controlled substances except in the course of his professional practice and when a bona fide veterinarian-client-patient relationship has been established.

Section 24. A veterinarian shall maintain a confidential relationship with his clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 25. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

Section 26. A veterinarian shall not physically abuse or engage in unnecessary rough handling of a patient under his care.

Section 27. A veterinarian shall not delegate to a veterinary technologist, technician, or an assistant who is not licensed as a veterinarian any aspect of the practice of veterinary medicine as

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defined in KRS 321.181(5), except as provided by KRS 321.443(1), without direct supervision by the veterinarian.

Section 28. A veterinarian shall not permit a veterinary technologist, technician, or assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 29. A veterinarian shall not refuse treatment of an animal on the basis of the client's race, color, sex, religion, national origin, or disability.

Section 30. A veterinarian may refuse to provide treatment to an animal for reasons other than those listed in Section 29 of this administrative regulation, but if such treatment is initiated, it shall be completed unless terminated by the client. A veterinarian shall have the right to refuse to admit as an inpatient to his hospital or clinic any animal that is not currently vaccinated, or to render veterinary medical services for any owner who uses physical or verbal abuse towards the veterinarian or towards any employee of the veterinarian.

Section 31. A veterinarian may refuse to return an animal to its owner on the grounds that the owner has failed to fully pay for veterinary medical services rendered, or boarding services rendered. A veterinarian shall make every effort to accommodate the economic situation of the client by any alternative means available.

Section 32. A veterinarian shall not neglect a patient under his care.

Section 33. A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner is away, except as otherwise provided by law.

Section 34. A veterinarian shall obtain the consent of the owner before disposing of any patient which dies while in the veterinarian's care, provided such consent is given within a reasonable time. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 35. A veterinarian shall obtain the consent of the patient's owner or agent before administering general anesthesia or performing any surgical procedure, unless circumstances qualifying as an emergency do not permit obtaining such consent.

Section 36. A veterinarian shall post at his facility and make available over the telephone his policy regarding the hours, emergency coverage, and other similar provisions for the operation of his facility.

Section 37. A veterinarian shall ascertain, before hiring, whether a potential veterinarian employee has a valid, current Kentucky license to practice veterinary medicine and shall be responsible for ascertaining whether the license to practice veterinary medicine of any veterinarian employee is current.

Section 38. A veterinarian shall obtain the consent of a patient's owner or agent before transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent.

Section 39. A veterinarian shall not engage in any conduct which reflects unfavorably on the profession of veterinary medicine.

JOHN McCLURE, Board Vice Chairman
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. **CONTACT PERSON:** David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,000 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation sets forth a code of ethical conduct for licensee.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:020. Approved veterinary colleges. [Examination for licensing; reciprocity; fees; reexaminations.]

RELATES TO: KRS 321.193 [321.220, 321.260, 321.270]

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY AND FUNCTION: KRS 321.190 requires all persons

engaging in the practice of veterinary medicine in the State of Kentucky to be licensed by the Kentucky Board of Veterinary Examiners. KRS 321.190 sets forth the requirements for licensure as a veterinarian. One (1) of the requirements is the receipt of a degree from a veterinary college approved by the board. This administrative regulation sets forth a listing of the veterinary colleges approved by the board. [KRS 321.260 provides that each applicant shall submit to an examination conducted by the board, with the exception of those persons who may obtain a license by reciprocity pursuant to the provisions of KRS 321.220. This regulation sets out the procedures to be followed in obtaining an application, the fees to be charged and procedures relating to the obtaining of a license as a result of this state reciprocating with another state.]

Section 1. [(+)] The board recognizes the following veterinary colleges as having those standards and requirements adequate to comply with the provisions of KRS 321.193 [321.260]. All of the following veterinary colleges have been recognized and approved by the Kentucky Board of Veterinary Examiners. Those colleges are as follows:

- (1) [(a)] College of Veterinary Medicine, Auburn University, Auburn, Alabama.
- (2) [(b)] University of California, School of Veterinary Medicine, Davis, California.
- (3) [(c)] Colorado State University, Division of Veterinary Medicine, Fort Collins, Colorado.
- (4) [(d)] Cornell University, New York State Veterinary College, Ithaca, New York.
- (5) [(e)] University of Utrecht, the Netherlands.
- (6) [(f)] University of Florida, School of Veterinary Medicine, Gainesville, Florida.
- (7) [(g)] University of Georgia, School of Veterinary Medicine, Athens, Georgia.
- (8) [(h)] University of Guelph, Ontario Veterinary College, Guelph Ontario, Canada.
- (9) [(i)] University of Illinois, School of Veterinary Medicine, Urbana, Illinois.
- (10) [(j)] Iowa State University, Division of Veterinary Medicine, Ames, Iowa.
- (11) [(k)] Kansas State University, School of Veterinary Medicine, Manhattan, Kansas.
- (12) [(l)] Louisiana State University, Baton Rouge, Louisiana.
- (13) [(m)] Michigan State College, Division of Veterinary Science, East Lansing, Michigan.
- (14) [(n)] University of Minnesota, School of Veterinary Medicine, St. Paul, Minnesota.
- (15) [(o)] Mississippi State University, Starkville, Mississippi.
- (16) [(p)] University of Missouri, School of Veterinary Medicine, Columbia, Missouri.
- (17) [(q)] Ecole Medicine Veterinaire de ma Province de Quebec, University de Montreal, La Trappe, Quebec, Canada.
- (18) [(r)] Ohio State University, College of Veterinary Medicine, Columbus, Ohio.
- (19) [(s)] Oklahoma State University, School of Veterinary Medicine, Stillwater, Oklahoma.
- (20) [(t)] University of Pennsylvania, School of Veterinary Medicine, Philadelphia, Pennsylvania.
- (21) [(u)] Purdue University, School of Veterinary Science and Medicine, Lafayette, Indiana.
- (22) [(v)] University of Saskatchewan, Western College of Veterinary Medicine, Saskatoon, Saskatchewan, Canada.
- (23) [(w)] University of Tennessee, College of Veterinary Medicine, Knoxville, Tennessee.
- (24) [(x)] Texas Agricultural and Mechanical University, School of Veterinary Medicine, College Station, Texas.
- (25) [(y)] Tuskegee Institute, School of Veterinary Medicine, Tuskegee Institute, Alabama.

(26) [(z)] Washington State University, College of Veterinary Medicine, Pullman, Washington.

Section 2. [(2)] All other veterinary colleges shall [must] have academic standards equivalent to the schools listed above in order to be recognized by this board. Evaluation of the academic standards, [of] veterinary courses and practices of these schools shall [will] be made after an application for a license has been received.

[Section 2. An application for examination for a license to practice veterinary medicine shall be submitted on an application form prescribed and provided by the board, accompanied by such evidence, statements, or documents as therein required, and shall be filed with the board at its principal office at least thirty (30) days, or in the case of graduates of veterinary colleges outside of the United States, at least ninety (90) days, before the date fixed for the examination. It will be necessary for an applicant to complete the application and forward it, along with the necessary enclosures, to the board's office, within the time described above, whether he desires a license through examination or as a result of reciprocity proceedings.]

Section 3. In addition to the examination fee of twenty five (25) dollars, all applicants shall be required to pay the fee charged for examination materials furnished to this board. Applicants will be notified of the examination fee and the examination materials fee at the time the application is forwarded to the applicant. All sums payable to the board shall be paid by certified check, cashier's check or postal money order and be payable to the Kentucky State Treasurer.

Section 4. Examinations shall be held at such times and places as shall be determined by the board. A schedule of the date, time and place of the examination shall be mailed to each applicant whose application is accepted by the board.

Section 5. The board shall not refund either the examination fee or the fee for the examination materials, except where good and sufficient cause for refunding all or a portion of the fees is shown to the board within a reasonable time prior to the date of the examination.

Section 6. In order for an applicant to obtain a license in this state by reciprocity, he must do the following:

- (1) Obtain an application from this board;
- (2) Complete the application and return it, along with the enclosures, to the board within the time specified herein;
- (3) Show proof that he successfully passed the examination given by the reciprocating state and with which reciprocity is sought;
- (4) Have the reciprocating state board forward a letter or other documents stating that the applicant is licensed in that state by virtue of an examination, that his license is in good standing, and this board shall further be advised of any derogatory information which may be in that board's file concerning the applicant;
- (5) Submit a letter of good standing from the state licensing boards in each and every state in which the applicant has been licensed, or if the applicant has permitted his license to lapse or for any reason is no longer licensed in any of these states, submit a letter from the state board explaining why he is no longer licensed therein;
- (6) Upon receipt of a satisfactory application and information from the reciprocating state board, the Kentucky Board of Veterinary Examiners will schedule a personal interview for the applicant. This personal interview may be conducted by the board or by any person delegated to act for the board. All applicants for license by reciprocity are hereby advised that the granting of licenses by reciprocity is by privilege and not by right and the granting of such licenses rests solely in the discretion of this board.

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~~Section 7. All applicants successfully passing the examination or obtaining a license in this state by virtue of reciprocity procedures shall be required to pay to this board the sum of twenty-five (25) dollars, which sum will be the fee charged for the issuance of the license certificate and the license certificate shall remain in good standing until the next renewal date. In addition to the reciprocity fee of twenty-five (25) dollars, those persons granted a license by reciprocity shall pay to this board all costs incurred by the board in processing and handling the application for such a license.~~

~~Section 8. Any applicant seeking to have the board consider examination scores forwarded by the Professional Examination Service (National Board scores) must submit scores of examinations conducted within the last five (5) years preceding the date of submission of the scores. Examination scores more than five (5) years old will not be considered by the board. The forwarded scores, in addition to being no more than five (5) years old, must meet the requirements of KRS 321.270(2)(a) and (b).~~

~~Section 9. The reexamination fee, when applicable, shall be twenty-five (25) dollars and in addition to the reexamination fee, all applicants shall be required to pay the costs charged for reexamination materials furnished to the board. Applicants will be notified of the reexamination costs at the time the application is forwarded to the applicant. All sums payable to the board shall be paid by certified check, cashier's check or postal money order and be payable to the Kentucky State Treasurer.~~

JOHN McCCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 150 applicants for licensure each year who would be subject to this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs.

1. First year: There are no costs.

2. Continuing costs or savings: There are no costs.

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

(b) Reporting and paperwork requirements: The application must be filed by the applicant. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets forth the approved colleges of veterinary medicine.

(a) Direct and indirect costs or savings: There are no costs.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Applications will be reviewed for conformance with this regulation.
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.
- (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (6) Any additional information or comments:
- TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:030. License, annual renewal notice.

RELATES TO: KRS 321.193, 321.211, 321.221, 321.441 [321.260, 321.330]

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY AND FUNCTION: KRS 321.193, 321.221, and 321.441 [321.260] require[s] the board to issue a license or registration [certificate] to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician or veterinary technologist [~~veterinary dentistry and veterinary surgery~~] in this state. KRS 321.211 and 321.441 [321.330] provide[s] for the annual renewal of the license or registration. This regulation requires the mailing of an annual renewal notice to all licensed veterinarians, veterinary technicians, and veterinary technologists and requires all licensed veterinarians, veterinary technicians, and veterinary technologists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. It further requires all licensed veterinarians, veterinary technicians, and veterinary technologists to keep the board apprised of the current address of the licensee.

Section 1. The Kentucky Board of Veterinary Examiners shall on or about August [April] of each year mail to each licensed veterinarian, veterinary technician, and veterinary technologist an annual renewal notice. This annual renewal notice shall be completed and received by [returned to] the board on or before September [June] 30 of each year. Renewals bearing a postmark of September 30 or earlier shall be considered received in a timely manner. The annual renewal fee [~~in the amount of twenty-five (25) dollars,~~] shall be attached to the completed renewal notice when it is returned to the board. Said annual renewal fee shall be paid by personal check, certified check, cashier's check or postal money order, payable to the Kentucky State Treasurer. All information requested on the annual renewal notice shall be furnished to the board when the completed annual renewal notice is returned to the board.

Section 2. Every licensed veterinarian, veterinary technician, or veterinary technologist [~~person holding a certificate of license~~] shall file his proper and current mailing address with the board at its principal office and shall immediately notify the board of any and all changes of his mailing address.

Section 3. Every licensed veterinarian shall list their continuing education hours received pursuant to 201 KAR 16:050 with the

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renewal form and furnished said information to the board. The board shall not renew the license of any person who fails to receive or appropriately document the required hours of continuing education. Said license shall expire and subsequently be terminated as prescribed by KRS 321.211.

JOHN McCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,000 licensees who would be subject to this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs.

1. First year: There are no costs.

2. Continuing costs or savings: There are no costs.

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

(b) Reporting and paperwork requirements: The renewal must be filed by the applicant. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets forth the requirements for renewal of licensure.

(a) Direct and indirect costs or savings: There are no costs.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Renewals will be reviewed for conformance with this regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:040. Approved programs for veterinary technicians and veterinary technologists [~~Examination and registration of animal technicians~~].

RELATES TO: KRS 321.441 [~~321.440, 321.450~~]

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY AND FUNCTION: KRS 321.441 [~~321.440 and 321.450~~] provides for the qualification, registration, and use of veterinary [animal] technicians and veterinary technologists. KRS 321.441 sets forth the requirements for registration as a veterinary technician and a veterinary technologist. One (1) of the requirements is the receipt of a degree from a program approved by the board. This administrative regulation sets forth a listing of the programs approved by the board. [~~This regulation sets out the procedures for qualifying for the examination and registration of animal technicians and states that disciplinary action may be taken against both the animal technician and licensed veterinarian under certain conditions.~~]

Section 1. Any licensed veterinarian desiring to have an animal technician registered by the board shall make application to the board on forms prepared by the board. Each application shall be accompanied by documents setting forth data requested on the form and the application fee shall be fifteen (15) dollars. In addition to the fee of fifteen (15) dollars, all applicants shall be required to pay the costs charged for examination materials furnished to this board. Applicants will be notified of the examination materials costs at the time the application is forwarded to the applicant. The payment of these sums pursuant to a check made payable to the Kentucky State Treasurer shall constitute the application fee and examination costs, and no portion of same shall be refundable. All applications must be received by the board at least thirty (30) days prior to the examination date.

Section 2. Those persons eligible to take the examination under KRS 32.440(1)(b) shall have two (2) years from June 10, 1976, in which to have applications submitted on their behalf by licensed veterinarians.]

Section 1. [~~3. (1)~~] The board recognizes the following programs [~~schools of animal technology~~] as having those standards and requirements adequate to comply with the provisions of KRS 321.441 [~~321.440~~]. All of the following programs [~~schools of animal technology~~] have been recognized and approved by the Kentucky Board of Veterinary Examiners. Those programs [~~schools~~] are as follows:

(1) [(a)] Los Angeles Pierce College, Woodland Hills, California.
(2) [(b)] Consumnes River College, Sacramento, California.
(3) [(c)] Colorado Mountain College, Glenwood Springs, Colorado.]

(4) [(d)] Bel-Rea Institute of Animal Technology, Denver, Colorado.

(5) [(e)] St. Petersburg Junior College, St. Petersburg, Florida.

(6) [(f)] Abraham Baldwin Agriculture College, Tifton, Georgia.

(7) [(g)] Parkland College, Champaign, Illinois.

(8) [(h)] Purdue University, West Lafayette, Indiana.

(9) [(i)] Colby Community College, Colby, Kansas.

(10) [(j)] Morehead State University, Morehead, Kentucky.

(11) Murray State University, Murray, Kentucky.

(12) [(k)] Wayne Community College, Detroit, Michigan.

(13) [(l)] Michigan State University, East Lansing, Michigan.

(14) [(m)] University of Minnesota, Waseca, Minnesota.

(15) [(n)] Maple Woods Community College, Kansas City, Missouri.

ri.

(16) [(o)] Northeast Missouri State University, Kirksville, Missouri.

(17) [(p)] University of Nebraska, Curtis, Nebraska.

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- (18) [(e)] Camden County College, Blackwood, New Jersey.
(19) [(f)] State University of New York, Canton, New York.
(20) [(e)] Central Carolina Technical Institute, Sanford, North Carolina.
(21) [(t)] North Dakota State University, Fargo, North Dakota.
(22) [(u)] Columbus Technical Institute, Columbus, Ohio.
(23) [(v)] Raymond Walters College, Cincinnati, Ohio.
(24) [(w)] Harcum Junior College, Bryn Mawr, Pennsylvania.)
(25) [(x)] Tri-County Technical College, Pendleton, South Carolina.
(26) [(y)] Columbia State Community College, Columbia, Tennessee.
(27) [(z)] Frank Phillips College, Border, Texas.
(28) [(aa)] Sul Ross State University, Alpine, Texas.
(29) [(bb)] Blue Ridge Community College, Weyers Cave, Virginia.
(30) [(ee)] Fort Steilacoom Community College, Tacoma, Washington.
(31) [(dd)] Eastern Wyoming College, Torrington, Wyoming.

Section 2. [(2)] All other programs shall ~~[schools of animal technology must]~~ have academic standards equivalent to the ~~programs [schools]~~ listed above in order to be recognized by this board. Evaluation of the academic standards, ~~[of]~~ animal technology courses, and practices of these schools shall [will] be made after an application for registration [a license] has been received.

[Section 4. The board will annually specify the dates and places of the examination. The examination shall consist of written, oral, and/or practical portions prepared by or for the board. Those subjects on which the applicant for registration may be examined shall consist of the following: laboratory procedures, x ray procedures, collection of laboratory samples, fitting large animals, stable and kennel management, surgical preparation and assistance, anesthesia, supply and equipment maintenance, sterilization of equipment, case histories, dehorning, castration, and pharmacology.]

Section 5. (1) An applicant for registration as an animal technician shall only be eligible to take the examination, if, as of the date of the examination, he is employed by the licensed veterinarian who submitted the application for him.

(2) Each person who passes an examination shall be registered as an animal technician and assigned a number. The certificate of registration shall recite that the registration shall be valid only so long as the animal technician is employed in the services of a licensed veterinarian.

Section 6. Each registered animal technician shall pay or have paid to him an annual renewal fee of fifteen (15) dollars, which amount shall be payable by check to the Kentucky State Treasurer, and shall be mailed to the office of the board on or before June 30 of each year. The board will mail an annual renewal notice to each licensed veterinarian having a registered animal technician in his employ by April 30 of each year, and this notice shall require the licensed veterinarian to report whether the registered animal technician is still in his employ, and shall further remind the veterinarian that the annual renewal fee is payable by June 30.

Section 7. (1) The registered animal technician and the licensed veterinarian for whom the animal technician is working shall be subject to appropriate disciplinary action by the board if the animal technician is permitted to and does perform veterinary services in excess of or outside of those services authorized by KRS 321.450(3).

(2) Further, the animal technician and licensed veterinarian may be subject to disciplinary action by the board if the animal technician is terminated, for any reason, as an employee of the licensed veterinarian, and the board is not promptly notified of this fact.]

JOHN McCCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: There are approximately 150 applicants for licensure each year who would be subject to this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs.

1. First year: There are no costs.

2. Continuing costs or savings: There are no costs.

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

(b) Reporting and paperwork requirements: The application must be filed by the applicant. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets forth the approved colleges of veterinary medicine.

(a) Direct and indirect costs or savings: There are no costs.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications will be reviewed for conformance with this regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.211(7) [321.330(4)]

STATUTORY AUTHORITY: KRS 321.211(7), 321.235 [321.240]

NECESSITY AND FUNCTION: Pursuant to KRS 321.211(7) the

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board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This regulation sets forth those requirements concerning required continuing education hours [~~annual courses of study of subjects~~] relating to the practice of veterinary medicine[, veterinary surgery, and veterinary dentistry].

Section 1. (1) Each veterinarian licensed by this board shall be required to annually complete fifteen (15) [eight (8)] hours of continuing education to be eligible for renewal of his license. Of the required hours, at least ten (10) hours shall be directly related to the practice of veterinary medicine and no more than five (5) hours may be in related areas such as practice management. The period during which continuing education shall be received shall be from October 1 of each year until September 30 of the following year. [~~study of courses in the subjects of veterinary medicine, veterinary surgery, and veterinary dentistry.~~] Those courses approved shall be:

(a) [Be] All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine; and

(b) All programs approved by the board, not associated with the American Veterinary Medical Association and its suborganizations.

(2) Those programs shall impart knowledge directly relating to the practice of veterinary medicine[, veterinary surgery, and veterinary dentistry] to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may [will] assure expansive and comprehensive care to the public.

Section 2. Each veterinarian shall be responsible for securing necessary documentation to support proof of his attendance at a course and shall annually, on the form furnished by the board, list those courses attended by him. The board may require this documentation [form] to be provided to the board [~~signed by the veterinarian before a notary public~~].

Section 3. The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year. In the event that the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for another extension.

Section 4. If a person, whose license has been terminated, applies to the board to be reinstated, he shall submit proof that he has completed fifteen (15) continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted. He may request that he be allowed to have his license reinstated immediately, with the provision that he shall receive fifteen (15) continuing education hours within six (6) months of the date of reinstatement. He shall be responsible for meeting the requirements of Section 1 of this administrative regulation in order to properly qualify for renewal of his license in the next licensure period.

JOHN McCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,000 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are small costs to licensees receiving continuing education.

1. First year: Licenses may incur small costs to receive continuing education.

2. Continuing costs or savings: Licensees may incur small costs to receive continuing education.

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

(b) Reporting and paperwork requirements: Licensees are required to report CE hours every year.

(2) Effects on the promulgating administrative body: This regulation sets forth continuing education requirements for licensees.

(a) Direct and indirect costs or savings: There will be small costs to the agency and no savings.

1. First year: Minimal costs.

2. Continuing costs or savings: Minimal costs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Licensees are required to report CE hours every year.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method provides a flexible means of acquiring continuing education hours.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Proposed Amendment)

201 KAR 16:060. Complaint processing procedures [for denial, suspension, nonrenewal or revocation hearings].

RELATES TO: KRS 321.351, 321.360 [321.330, 321.340, 321.350, 321.360, 321.370, 321.380, 321.390, 321.420]

STATUTORY AUTHORITY: KRS 321.235, 321.240, 321.351, 321.360

NECESSITY AND FUNCTION: KRS 321.235(2) authorizes the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 321 or the regulations promulgated hereunder. This regulation establishes the detailed procedures for the investigation of complaints received by the board. [~~To outline the administrative and adjudicative procedure before the board in license denial, suspension, nonrenewal and revocation hearings.~~]

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

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

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 321 or the administrative regulations promulgated thereunder by a licensee or other person.

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 321 or the regulations promulgated thereunder.

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

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

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures. [(1) Complaints. A complaint that a person (hereafter called respondent) has violated the requirements of KRS Chapter 321 or the rules and regulations of the board shall be made in writing to or by the Kentucky board of Veterinary Examiners. The complaint must be a clear and concise statement of violation and it must be signed by the complainant. Within ten (10) days of the receipt of the complaint the executive secretary of the board shall acknowledge to the complainant receipt of the complaint.

(2) Notice to respondent. Within ten (10) days after the receipt of the written complaint, the executive secretary of the board shall notify the respondent of the complaint in writing. This notice shall require the respondent to reply to the complaint in writing to the board within twenty (20) days after receipt of notice.

(3) Consideration and investigation of complaint. At the next regularly scheduled meeting of the board, the executive secretary shall bring the complaint and response to the attention of the board. The board will decide either that no violation has occurred or that further investigation is needed. If the board decides that no violation has occurred, it shall so notify both the complainant and the respondent in writing. If the board decides that further investigation is needed, the chairman of the board shall assign one (1) or more staff members, legal counsel or other person to conduct such investigation. The results of said investigation shall be communicated to the board members as soon as possible. The board shall decide if a hearing is necessary.

(4) Arrangement for a hearing. If the board decides that a hearing is necessary, it shall set a date for the hearing and it shall notify the respondent at least twenty (20) days prior to the date set for the hearing in writing of the charges made and the date and place of the hearing. Such written notice may be served by delivery of the same personally to the respondent or by mailing same by certified mail, return receipt requested, to the last known business address of the respondent.

(5) Hearing. At the hearing the respondent has the right to be present and to be represented by counsel. The board is not bound by

the formal rules of evidence, but may exclude evidence that is irrelevant or repetitious. Testimony shall be under oath or affirmation. The hearing shall be recorded. All documents accepted by the board, including the complaint, response and investigative report, shall be made part of the record of the hearing. The hearing shall be held before at least a majority of the members of the board.

(6) Final order. The final decision in any case in which a hearing is held shall be in writing and shall be made a part of the official record. It shall include a statement of the findings of fact and conclusions of law. The results of the hearing shall be communicated to the respondent by certified mail, return receipt requested. The decision of the board shall be by majority vote of the entire board.]

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

(2) Upon receipt of a complaint a copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A copy of the complaint shall also be sent to the licensed individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of twenty (20) days from the date of receipt to make a response. Failure to respond in a timely fashion may constitute a violation of the code of ethical conduct pursuant to 201 KAR 16:010, Section 19. [Procedure After Revocation. If, following a hearing, the board revokes a license for cause and such decision of the board becomes final, the person whose license has been revoked may not be issued another license within five (5) years of the date of revocation. If, at the conclusion of the five (5) year period, such person applies for a license, the board shall decide whether to accept such application, depending on the cause for revocation. If the board decides not to accept the application, the revocation shall continue in force. If the board decides to accept the application, the applicant will be required to comply with KRS 321.260 and KRS 321.270.]

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

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

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

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

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should be held.

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

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

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing veterinary medicine without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. Such complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the practice of veterinary medicine without appropriate certification with a request that appropriate action be taken under KRS 321.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of veterinary medicine.

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

(2) When, in the judgment of the board, an alleged violation is not of a serious nature, and the evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a letter of reprimand to the individual who is named in the complaint as a means of resolving the complaint. Such action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of reprimand and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of reprimand and shall be granted a full hearing on the complaint. If this appeal is requested, the board shall file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process. (1) Any notice required by KRS Chapter 321 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service or avoidance of service shall not prevent the board from pursuing proceedings as may be appropriate.

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

JOHN McCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. **CONTACT PERSON:** David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,000 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation sets forth the procedures for processing complaints for the board.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method preserves the legal rights of all parties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

TOURISM CABINET Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 1:015. Boats and outboard motors; restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625

STATUTORY AUTHORITY: KRS 13A.350, 150.620, 150.625

NECESSITY AND FUNCTION: It is necessary to regulate the size of outboard motors and boats on state-owned lakes to minimize the

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conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports. This amendment is necessary to set the motor limit on Goose, Island, and South Lakes (Peabody WMA) [Lincoln Homestead Lake].

Section 1. No boat shall be permitted on any of the herein named lakes with a centerline exceeding eighteen (18) feet six (6) inches in length as measured on deck or from bow to stern, except canoes which have no length limit and float boats which shall have pontoons and decking no longer than twenty-two (22) feet. On Lake Malone and Lake Beshear only float boats may have pontoons and decking up to thirty (30) feet in length.

Section 2. No houseboats of any description shall be permitted on any of the herein named lakes.

Section 3. No motor of any type is permitted on the following lakes:

- (1) Lake Chumley, Lincoln County;
- (2) Dennie Gooch Lake, Pulaski County;
- (3) Martin County Lake, Martin County; and
- (4) Kingdom Come Lake, Harlan County.

Section 4. Electric motors only may be used on the following lakes:

- (1) Carter Caves Lake, Carter County;
- (2) Spurlington Lake, Taylor County;
- (3) Marion County Lake, Marion County;
- (4) Lake Washburn, Ohio County;
- (5) Bert Combs Lake, Clay County;
- (6) McNeely Lake, Jefferson County;
- (7) Lake Mauzy, Union County;
- (8) Carpenter Lake and Kingfisher Lakes, Daviess County;
- (9) Metcalfe County Lake, Metcalfe County;
- (10) Briggs Lake, Logan County;
- (11) Big Turner, Ballard County;
- (12) Little Turner, Ballard County;
- (13) Shelby, Ballard County;
- (14) Mitchell, Ballard County;
- (15) Happy Hollow, Ballard County;
- (16) Burnt Slough, Ballard County;
- (17) Butler, Ballard County;
- (18) Sandy Slough, Ballard County;
- (19) Long Pond, Ballard County;
- (20) Cross Slough, Ballard County;
- (21) Little Green Sea, Ballard County;
- (22) Burnt Pond, Ballard County;
- (23) Arrowhead Slough, Ballard County;
- (24) Deep Slough, Ballard County;
- (25) Beaver Dam Slough, Ballard County;
- (26) Cypress Slough, Ballard County;
- (27) Twin Pockets Slough, Ballard County;
- (28) Lake Reba, Madison County;
- (29) Lincoln Homestead Lake, Washington County;
- (30) Goose, Muhlenberg County;
- (31) Island, Ohio County;
- (32) South, Ohio County.

Section 5. No motor larger than ten (10) hp. shall be used on the following state-owned lakes, and motors shall only be operated at slow speeds which cause no disturbance or interference with fishing at:

- (1) Shanty Hollow Lake, Warren County;
- (2) Bullock Pen Lake, Grant County;
- (3) Lake Boltz, Grant County;
- (4) Kincaid Lake, Pendleton County;
- (5) Elmer Davis Lake, Owen County;

- (6) Beaver Creek Lake, Anderson County;
- (7) Herb Smith Lake, Harlan County;
- (8) Corinth Lake, Grant County;
- (9) Greenbo Lake, Greenup County;
- (10) Swan Lake, Ballard County.

Section 6. No boat motor larger than 150 hp. shall be used, and all boat motors used shall have an underwater exhaust on the following state-owned lakes:

- (1) Guist Creek Lake, Shelby County;
- (2) Lake Malone, Todd, Muhlenberg and Logan Counties; and
- (3) Lake Beshear, Christian and Caldwell Counties.

Section 7. Boat motors of any size may be used on Pan Bowl Lake, Breathitt County and Wilgreen Lake, Madison County; however, boat speed on the entire lake shall not exceed idle speed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUAllen, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, February 24, 1993 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by February 19, 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. 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: It is estimated that 500-1000 individual anglers will fish Goose, Island and South Lakes (80 acres each). Those who fish from the bank or out of boats and have electric motors will be allowed to use them. Those with gasoline motors will not be able to use them. These lakes have been previously closed to public access.

(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork are required.

(2) Effects on the promulgating administrative body: Some additional effort will be required. Policing will be added as a part of the ongoing routine patrol in that area.

(a) Direct and indirect costs or savings: Additional costs will occur, but will be offset by a use permit fee.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional

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reporting and paperwork required.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on funding, budgets, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no reasonable alternative approaches that could be used.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or government policies which are in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 1:075. Giggling, grabbing or snagging, tickling and noodling.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.470

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175, 150.360, 150.440, 150.445, 150.470

NECESSITY AND FUNCTION: This regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource. This amendment is necessary to open the tributaries of the North, Middle, and South Forks of the Kentucky River to tickling and noodling [~~reopen sections of Sturgeon, Station Camp and Russell Fork creeks to gigging and snagging~~].

Section 1. Fish may be taken by snagging using a single hook or one (1) treble hook except in the Green River and its tributaries and Rolling Fork River and its tributaries where five (5) hooks, either single or treble hooks, may be used.

Section 2. A person may gig or snag from the stream or lake banks, but shall not use these fishing methods from a boat or platform, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

Section 3. The season during which gigging and snagging is permitted is February 1 through May 10, annually, except persons may gig rough fish through the ice any time the surface is frozen thick enough to stand on, and gigger must gig while supported by the ice.

Section 4. Gigging or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited in Sections 2 and 5 of this regulation.

Section 5. Gigging or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See subsection (1)(b) and subsection (2)(b) of this section.)

(1)(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below

Barkley Dam downstream to US 62 bridge.

(b) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(2)(a) Within 200 yards of any dam on any stream;

(b) Snagging only is permitted in the Tennessee River below Kentucky Dam subject to restrictions in 301 KAR 1:020.

(3) Stream and counties:

Bark Camp Creek - Whitley;

Barren River Tailwaters, from the Barren River Lake Dam downstream to the Hwy. 101 bridge - Allen and Barren;

Beaver Creek - McCreary;

Beaver Creek - Wayne;

Beaver Dam Creek - Edmonson;

Big Double Creek - Clay;

Buffalo Creek, Right Fork - Owsley;

Canada Creek - Wayne;

Cane Creek - Laurel;

Caney Creek - Elliott;

Casey Creek - Trigg;

Clover Bottom Creek - Jackson;

Dogslaughter Creek - Whitley;

East Fork Little Sandy River - Boyd;

Elkhorn Creek - Pike;

Goose Creek - Casey and Russell;

Hawk Creek - Laurel;

Hood Creek - Johnson and Lawrence;

Indian Creek - Jackson;

Laurel Creek - Elliott;

Lick Creek - McCreary;

Lick Creek - Simpson;

Little Kentucky River, upstream from a point 200 yards below the low water dam at the Sulphur Road Bridge - Trimble;

Little South Fork - McCreary and Wayne;

Little Whipporwill Creek - Logan;

Lynn Camp Creek - Hart;

Middle Fork Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line - Perry;

Middle Fork Red River - Powell and Wolfe;

Peter Creek - Barren and Monroe;

Raven Creek - Harrison;

Rock Creek - McCreary;

Rockcastle Creek, from the junction of Hwy. 3 and Hwy. 40 in Inez north approximately five (5) miles to the Hwy. 3, Johnson Bottom Bridge - Martin;

Rough Creek - Hardin;

Rough River, below Rough River Lake Dam downstream to Hwy. 54 bridge - Breckinridge and Grayson;

Roundstone Creek - Hart;

Russell Fork, upstream from the junction of U.S. Highway 460 and Ky. Highway 80 - Pike;

Sinking Creek - Breckinridge;

Skinframe Creek - Lyon;

Station Camp Creek, downstream from the confluence of War Fork Creek - Estill;

Sturgeon Creek, downstream from the confluence of Wild Dog Creek - Lee;

Sulphur Spring Creek - Simpson;

Swift Camp Creek - Wolfe;

Tammel Fork, upstream from the Hwy. 1332 bridge at Butlersville - Allen;

War Fork - Jackson.

Section 6. All game fish caught by gigging or snagging, except those taken below Kentucky Dam in the Tennessee River, shall be returned to the water immediately, regardless of condition.

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Section 7. The tickling and noodling (hand grabbing) season for rough fish shall be June 10 to August 31 (all dates inclusive) during daylight hours only. Tickling and noodling shall be permitted in all waters [except the tributaries to the North, Middle and South Forks of the Kentucky River]. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish of which not more than five (5) may be catfish.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLAN, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, February 24, 1993 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by February 19, 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. 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are approximately 500 individual fishermen that will use the streams affected by this change. Those streams sections previously closed will now be open.

(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork are required.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing is a part of the ongoing routine patrol.

(a) Direct and indirect costs or savings: No significant additional costs will occur.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting and paperwork required.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on funding, budgets, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no reasonable alternative approaches that could be used.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or government policies which are in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(6) Any additional information or comments: 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 1:200. Seasons and limits for angling.

RELATES TO: KRS 150.010, 150.470, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.470

NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to establish angling regulations for Goose, Island and South Lakes (Peabody WMA), Lincoln Homestead Lake; to set an aggregate creel limit on white bass, hybrid striped bass and yellow bass at Guist Creek, Taylorsville and Fishtrap lakes; to reduce the daily creel limit on striped bass in the lower Cumberland and Tennessee Rivers from five (5) to three (3); to reduce the statewide creel limit on black bass from ten (10) to six (6); to reduce the statewide creel limit on brown trout from eight (8) to three (3); to establish a ten (10) inch size limit on crappie in Cumberland Lake; to set an experimental slot limit on smallmouth and largemouth bass in Elkhorn Creek, and to set a fifteen (15) inch size limit on bass in Barren Lake.]

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

Species	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12	6	12
Smallmouth	12	Singly	Singly
Kentucky (spotted)	None	or in	or in
Coosa	12	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Chain pickerel	None	5	10
White bass and yellow bass	None	30	60
Striped bass (rock- fish) and their hybrids	15	5	5
Crappie	None	30	60
Rainbow trout & brown trout	None	8	8
		No more than 3 may be brown trout	

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Brook trout 10 2 2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. Fishing is permitted only with artificial lures or flies.

(4) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The daily creel and possession limits for crappie are fifteen (15) and thirty (30) respectively. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(5) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The size limit for crappie is ten (10) inches.

(6) The impounded waters of Cave Run, Yatesville, Paintsville, Carr Fork, Buckhorn and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

The size limit for crappie is ten (10) inches. The size limit for largemouth and smallmouth bass is fifteen (15) inches except that the daily creel limit may include no more than one (1) and the possession limit no more than two (2) less than fifteen (15) inches.

(8) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The creel and possession limits for striped bass (rockfish) are three (3) and three (3) respectively. The size limit for crappie is ten (10) inches.

(9) In the following brook trout streams fishing is permitted only

with artificial flies or lures with a single hook.

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

(c) Bad Branch, Letcher County;

(d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;

(e) Parched Corn Creek, Wolfe County.

(10) The impounded waters of Carter Caves Lake. The size limit for largemouth bass is twenty (20) inches. The daily creel and possession limits for largemouth bass are one (1) and one (1) respectively. Fishing is permitted only during daylight hours.

(11) The impounded waters of Lake Reba. The size limit for largemouth and smallmouth bass is fifteen (15) inches.

(12) The impounded waters of Lincoln Homestead State Park Lake: [closed to fishing until January 1, 1993.]

Species	Size Limit Inches	Daily/Possession Limit
Largemouth bass	15	3
Bluegill and redear sunfish (singly or in aggregate)	over 7 under 7	10 No Limit
Channel catfish	None	3

Fishing is permitted during daylight hours only.

(13) Ohio River. The daily creel limit for crappie is sixty (60), the daily creel limit for white bass and yellow bass is sixty (60), (singly or in aggregate).

(14) The impounded waters of Nolin and Green River Lakes. The size limit for crappie is nine (9) inches.

(15) The impounded waters of Shanty Hollow and Marion County lakes. There is no size limit on black bass.

(16) The impounded waters of Leary Lake:

Species	Size Limit Inches	Daily Creel Limit
Largemouth bass	15	1
Bluegill	None	12
Channel catfish	None	2

Fishing is permitted during daylight hours only.

(17) The impounded waters of Lake Malone. The size limit on black bass is twelve (12) inches except that the daily creel limit may include no more than two (2) and the possession limit no more than four (4) black bass less than twelve (12) inches in length.

(18) The impounded waters of Elmer Davis Lake. Slot limit - black bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Black bass between twelve (12) and sixteen (16) inches in length shall be released.

(19) Upper and lower Game Farm Lakes.

Species	Size Limit Inches	Daily Creel Limit
Black bass	15	2
Channel catfish	None	3

(20) The removal of grass carp from lakes owned and managed by the Kentucky Department of Fish and Wildlife Resources is prohibited.

(21) The impounded waters of Guist Creek Lake. The size limit and daily creel/possession limit for hybrid striped bass, white bass

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and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(22) The impounded waters of Fishtrap Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(23) The Tennessee River from Kentucky Lake Dam downstream to the confluence with the Ohio River and the Cumberland River from Barkley Lake Dam downstream to the confluence with the Ohio River. The daily creel/possession limit for striped bass is three (3).

(24) Elkhorn Creek (Franklin County) from the confluence of the North and South Forks downstream to the Kentucky River. Slot limit - smallmouth bass and largemouth bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Smallmouth bass and largemouth bass between twelve (12) and sixteen (16) inches in length shall be released. The daily creel limit of six (6) may include no more than two (2) bass greater than sixteen (16) inches in length.

(25) The impounded waters of Goose, Island, and South Lakes (Peabody WMA).

Species	Creel Limit	Size Limit
Largemouth bass	1	20"
Bluegill	15	None
Redbreast sunfish	15	None
Channel catfish	2	15"
Walleye/hybrids	1	15"
Crappie	10	None

Fishing season is from July 1 through October 15 annually. Fishing allowed during daylight hours only. No frog hunting allowed.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above-named fish while in the field and before he has completed fishing for the day.

[Section 5. Amended changes in Section 1 and Section 3(3), (4), (6), (7), (8), (9), (21), (22), (23), and (24) will be enforced beginning March 1, 1993.]

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUAllen, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, February 24, 1993 at 11 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by February 19, 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. 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: Peter W. Pfeiffer, Director, Division of Fisheries, Department

of Fish and Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are approximately 500-1000 individual anglers that will fish Goose, Island and South Lakes annually. These lakes have been previously closed to public access.

(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork are required.

(2) Effects on the promulgating administrative body: Some additional effort will be required. Policing will be added as a part of the ongoing routine patrol.

(a) Direct and indirect costs or savings: Some additional costs will occur, but will be offset by a use permit fee.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting and paperwork required.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on funding, budgets, manpower levels or equipment needs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no reasonable alternative approaches that could be used to effectively manage these fishery resources.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or government policies which are in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, [150.025, 150.092,] 150.170, 150.175, [150.180, 150.300, 150.305,] 150.340, 150.360, [150.365,] 150.370, 150.390, 150.399, 150.400, 150.410, [150.415, 150.416, 150.417,] 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175 [150.025]

NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds,

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furbearers and small game and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply.

Section 1. Definitions. (1) "Trap" means deadfall, wire cage or box trap, foothold trap, padded foothold trap, Conibear-type trap or nonlocking snare.

(2) "Foothold trap" means a spring-loaded trap with smooth, metallic jaws designed to capture an animal by closing upon one of its feet.

(3) "Padded foothold trap" means a spring-loaded trap with offset jaws designed to capture an animal by closing upon one of its feet and which is commercially constructed so the edges designed to touch the animal are composed of a nonmetallic substance.

(4) "Conibear-type trap" means a spring-loaded trap with opposing jaws designed to capture an animal around the neck or body and quickly render that animal unconscious or dead.

(5) "Nonlocking snare" means a wire, cable or string which forms a loop to capture an animal and which is constructed without a device to prevent the loop from loosening.

(6) "Furbearer" means mink, muskrat, beaver, opossum, gray fox, red fox, raccoon, weasel, striped skunk and bobcat.

Section 2. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): ~~[Eastern zone - Saturday preceding Labor Day through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through December 31. The Eastern zone includes the following counties: Bell, Breathitt, Clay, Clinton, Elliott, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, and Whitley. Western zone -]~~ third Saturday in August through October 31, and the tenth day after the second Saturday in November through December 31. ~~[The Western zone includes all counties not in the Eastern zone.]~~

(2) Rabbits and quail: Zone A - November 1 through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through January 31. Zone A includes the following counties: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Estill, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

Zone B - the tenth day after the second Saturday in November through the third Sunday in February. Zone B includes all counties not listed in Zone A above.

(3) Grouse: the tenth day after the second Saturday in November through the last day in February. Grouse hunting is permitted in the following counties: Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

(4) Furbearers: the tenth day after the second Saturday in November through January 31. Bobcats shall be taken only according to provisions of 301 KAR 2:240.

(5) Extended beaver season: the entire month of February.

(6) Falconry hunting: squirrels, rabbits, quail, ruffed grouse and furbearers may be taken by falconry from September 1 through February 15.

(7) For persons who hunt red and gray fox and rabbits during daylight hours with dogs for sport and not to kill, year round open season.

Section 3. Legal Trapping Devices and Hunting Restrictions. (1) Traps. All traps set on dry land shall be ~~[are limited to]~~ deadfalls, wire cage or box traps, No. 2 or smaller foothold traps, padded foothold traps having a jaw spread of six (6) inches or less, No. 220 or smaller Conibear-type traps or ~~[and]~~ snares without self-locking devices. Traps shall not be set closer than ten (10) feet apart and shall not be set in trails or paths commonly used by humans or domestic animals. All traps are legal for water sets except during the extended beaver season as stipulated in subsection (2) of this section.

(2) Extended beaver season: traps ~~permitted~~ ~~[restrictions]~~. Traps of size No. 3 and larger, padded foothold traps having a jaw spread of five and one-half (5 1/2) inches or larger, Conibear-type traps, with jaw spread eight (8) inches or larger and nonlocking snares. Only water sets are permitted.

(3) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices.

(4) Taking raccoon and opossum. Raccoon and opossum shall not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(5) Prohibited ammunition. No person hunting any species listed in this regulation shall have in his or her possession any buckshot or shotgun slugs.

(6) Shooting hours. Daylight hours only, except for raccoon and opossum which may be taken any time during day or night.

Section 4. Bag and Possession Limits.

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail	8	16
Grouse	4	8
Furbearers (except raccoon by means other than trapping)	No limits	No limits
Raccoon (by means other than trapping)	1	No limits*
Falconry	During portions of this season which occur outside of seasons specified in Section 3(1), (2), (3) and (4) of this regulation, the daily falconry bag limit shall not exceed two (2) of any of these species, singly or in the aggregate, per falconer.	

*No possession limit on raccoons, except that no hunter shall take more than the daily bag limit within a twenty-four (24) hour period from noon to noon.

DON R. McCORMICK, Commissioner

DAVID H. GODBY, Chairman

CRIT LUALLAN, Secretary

APPROVED BY AGENCY: December 8, 1992

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1993 at 9 a.m. at the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 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: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: 340,000 small game hunters and 7,000 trappers are expected to participate in the hunting and trapping seasons proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license (\$12.50 for residents) or a valid trapping license (\$15.00 resident, \$7.50 resident landowner/tenant), respectively.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is \$900,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 340,000 small game hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters is \$147 according to the 1985 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was \$209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A.

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. The state is zoned for rabbit, squirrel and quail hunting to account for variances in habitat and hunting conditions.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses. This office receives a \$.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS [~~150.010, 150.021,~~] 150.022[~~, 150.023~~]

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.022 [~~150.025~~]

NECESSITY AND FUNCTION: KRS 150.022 stipulates that the Commissioner of the Department of Fish and Wildlife Resources shall call a meeting of sportsmen in each wildlife district to select five (5) names for submission to the governor for appointment to the Fish and Wildlife Resources Commission. This regulation is necessary to assure that these meetings are conducted in a fair and consistent manner in each district. The function of this regulation is to establish the method by which this selection process is to be carried out and to provide for a process by which grievances may be resolved.

Section 1. Scheduling of Meetings and Notification of the Public.

(1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the wildlife district that is centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he deems necessary to insure the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. However, should a change of location be called as provided for in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. He may also delay the beginning of the meeting for any other reason he deems necessary, but under no circumstances may he convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public at 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each

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newspaper in the district a legal notice announcing the purpose, time and place of the meeting. He shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, he shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall [will] serve as chairman of the meeting, and this chairman shall be the final arbiter of any disputes or procedural questions which may arise during the course of the meeting.

(2) After calling the meeting to order, the chairman shall explain the purpose of the meeting and the rules under which it will be conducted.

(3) The chairman shall [will] then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district ~~[and registered political affiliation. The information contained in this affidavit shall be considered binding until an appointment is made by the governor and may not be changed by a nominee or by any other person].~~

(5) The chairman shall not close the nominations until he has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) Should no more than five (5) names be placed in nomination, the chairman shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) Should more than five (5) names be placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The chairman shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The chairman shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his legal right to participate in the selection process as stipulated in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and then all shall swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his choice on the ballot provided. Ballot boxes, manned by personnel of the department, will be available at designated exits. Each eligible participant shall hand the department employee his signed affidavit, then (and only then) shall [will] he be allowed to place his ballot in the ballot box.

(6) After depositing his ballot, each participant shall immediately leave the meeting room and shall [may] not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the chairman or his designee(s).

(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.

(9) Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The chairman shall obtain a written statement from any committee member who feels that

irregularities did occur during the course of the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the chairman shall settle the issue by the toss of a coin. Tie votes which do not affect the outcome of the selection of the five (5) names will not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the chairman, whose decision shall be binding unless subsequently overturned by the commission or the courts as stipulated below.

(3) Any individual who is aggrieved by a decision of the chairman or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission within ten (10) calendar days after the meeting.

(4) The commission shall, within fifteen (15) working days after the receipt of a written appeal, call a special open meeting to hear testimony on the appeal and decide the matter.

(5) Decisions of the commission may be appealed within ten (10) calendar days to the Franklin Circuit Court. However, the decision of the commission shall stand unless it is proved that the decision was procured or made by fraud, duress, malfeasance or illegal means.

Section 5. Submission of the List of Nominees to the Governor.

(1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

DON R. McCORMICK, Commissioner

DAVID H. GODBY, Chairman

CRIT LUAllen, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, February 24, 1993 at 1 p.m. in the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by February 19, 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Don R. McCormick, Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: One; state agency; Department of Fish and Wildlife Resources.

(a) Direct and indirect costs or savings to those affected: There will be no costs savings to the department.

1. First year: None

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: This will slightly reduce the department's paperwork necessary for nominations and selections of commissioners.

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(2) Effects on the promulgating administrative body: Slight reduction in paperwork.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slight reduction in paperwork.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not have any effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives besides leaving the regulation as it is which was discovered to be unacceptable on possible constitutional grounds.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. There is no impact on regulated activities making tiering appropriate, necessary or possible.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities

(Proposed Amendment)

501 KAR 3:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, regional jail authority, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, and other personnel involved in the supervision, custody, care or treatment of prisoners in the jail.

(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

(a) Charged with or convicted of an offense;

(b) Held for extradition or as a material witness; or

(c) Confined for any reason.

(5) "Department [Cabinet]" means the Department of Corrections [Cabinet].

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(9) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(11) "Dormitory" is an area equipped for housing not less than three (3) persons or more than sixteen (16) [fifteen (15)] persons.

(12) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(13) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(14) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

(15) "Penal type" means furnishings approved by the Department of Corrections [Cabinet].

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 3:030. Fiscal management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth physical management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.

(2) The jailer shall use the format for budget development on forms prepared by the State and Local Finance Office.

(3) The State and Local Finance Office shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide inmates with approved items [not supplied by the jail].

Section 4. Audits. The county jail budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been

scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

ADMINISTRATIVE REGISTER - 1846

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

(2) When female inmates are lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision. [~~female staff shall be made available as needed to perform sensitive procedures to include but not limited to:~~

(a) Admission;

(b) Searches;]

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.

(2) All security employees of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the jail shall receive salaries at least equal to minimum wage [~~the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied~~].

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the Department of Corrections [Cabinet].

(a) Local corrections training efforts shall be certified by the Department of Corrections [Cabinet].

(b) The Curriculum Advisory Committee shall advise the Department of Corrections [Cabinet] on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the Department of Corrections [Cabinet].

(2) Deputy jailers, correctional officers and other employees whose jobs require supervision of inmates shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Department of Corrections [Cabinet] on a regional or local basis.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall have written policy and procedures that promote the physical fitness of staff. [~~ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.~~]

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include but not be limited to the following:

(a) Employees shall not:

1. Exchange personal gifts or favors with inmates, their family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;

4. Violate or disobey established rules, regulations, or lawful orders from a superior;

5. Discriminate against any inmate on the basis of race, religion, creed, gender, national origin, or other individual characteristics;

6. Employ corporal punishment or unnecessary physical force;

7. Subject inmates to any form of unwarranted physical or mental abuse;

8. Intentionally demean or humiliate inmates;

9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of staff members or inmates in the presence of inmates;

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with inmates; and

15. Inquire about, disclose, or discuss details of an inmate's crime other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, regulations, and lawful orders from superiors;

2. Treat all inmates in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

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3. Additional factors increasing or decreasing costs: Same as 2(a)1.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

ADMINISTRATIVE REGISTER - 1847

administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

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(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 3:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.055, 441.064, and 441.075 [441.041, 441.042, and 441.043], and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections [Cabinet] shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

(1) Site selection.

(2) Probable need as it relates to capacity and types of inmates to be housed.

(3) Sources of financing for constructing.

(4) Laws and regulations relating to treatment of inmates.

(5) Laws and regulations relating to facilities for inmates.

(6) Sources of revenue for operations of the jail.

(7) Probable cost for operation of the jail.

(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No jail shall be built without site acceptance by the Department of Corrections [Cabinet]. The following criteria shall be considered in site selection including but not limited to:

(1) Size.

(2) Proximity to courts.

(3) Proximity to community resources.

(4) Availability of public transportation.

(5) Environmental health.

(6) Adequate parking.

(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Department of Corrections [Cabinet] for review and approval as follows:

(1) Programming phase. This submission shall show:

(a) Evaluation of existing facility;

(b) Population analysis;

(c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Jails;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation costs;

(f) Financing alternatives, if applicable;

(g) A design-construction time schedule;

(h) Summary and recommendations; and

(i) [(h)] This phase is submitted on major renovation or new construction only and for information review purposes.

(2) Schematic phase.

(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;

(b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;

(c) Documentation of site as to:

1. Size;

2. Proximity to courts;

3. Proximity to community resources;

4. Availability of public transportation;

5. Environmental health;

6. Adequate parking; and

7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawings of all exterior walls; and

(f) Schematic cost estimate to include revised construction and operation costs;

(g) A revised design-construction time schedule.

(3) Design development phase.

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for all materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) Construction document phase.

(a) Revised design development construction drawings following review by all applicable agencies.

(b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by

the Department of Corrections [Cabinet].

(c) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) Contract administration.

(a) Signed copies of all contracts for construction, financing and bonding;

(b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders must be submitted to the Department of Corrections [Cabinet] for review and approval.

(6) The Department of Corrections [Cabinet] will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (5)(d) of this section has been approved.

(7) Depending on the site of the proposed constructions, renovation or addition the Department of Corrections [Cabinet] may combine two (2) or more phases as outlined above for review and approval.

(8) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and/or graphic addenda, field orders and change orders. In addition a set of accurate as built drawings shall be submitted to Corrections within sixty (60) days of occupancy of the facility.

Section 5. Waiver of Compliance. (1) The Department of Corrections [Cabinet] may grant a waiver of the implementation of the physical plant standards for an existing jail if the department [cabinet] determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections [Cabinet]. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Department of Corrections [Cabinet], shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department [Cabinet] as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(a) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance, an adult inmate entrance, and a service

entrance. The Department of Corrections [Cabinet] may permit these entrances to be combined.

1. Public entrance. The purpose of this entrance is to divert the general public from the security area of the jail and from contact with incoming inmates. This area will be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room by means of direct surveillance or closed circuit T.V.

b. Meet the requirements for handicapped persons.

2. Service entrance. The purpose of this entrance is to provide access to service vehicles and delivery trucks with minimum security risks. It may contain a loading dock and shall be located in close proximity to storage rooms and the kitchen area.

3. Adult inmate entrance. The purpose of this entrance is to provide secure and private access to the jail for incoming inmates. This entrance must be serviced by a drive-in sallyport or a secure walk-in vestibule and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstacles.

d. Be protected from inclement weather.

e. Have a security penal type pistol locker in sallyport or vestibule.

f. All hardware and equipment shall be of approved penal type.

(b) Exits. All openings in the security perimeter shall be secured with penal devices. Fire exits, when possible, shall open into controlled, secured courts and exercise areas.

(c) Administrative areas. This area will provide space outside the secured area of the jail to house the administrative offices and to accommodate the public. This shall contain the following:

1. Waiting area. To provide space for the general public which is protected from inclement weather. This area shall [may] have toilet facilities and drinking fountains, in new jails.

2. Visiting area, public side. This area shall provide for private communication with inmates and be located in close proximity to the waiting area. ~~[All furnishings of this area shall be penal type and permanently attached.]~~

3. Office area. This area shall be of sufficient space to house the administrative function of the jail.

4. Entrance to security area. The purpose is to provide secure access to the security area, be penal type and access shall be controlled from the security area.

(d) Security areas. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas: Booking area. The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

1. Close proximity to a secure area for storage of inmate personal property.

2. Close proximity to an area for photography and fingerprinting.

3. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.

4. Close proximity to temporary holding and detoxification cells.

5. Located in a manner to be monitored by a control room.

(e) Detoxification area. The purpose is to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.

2. A minimum of eight (8) feet ceiling height.

3. One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate.

4. A penal commode/lavatory and a flush floor drain controlled from outside the cell.

5. A bubble-type drinking fountain.

6. All fixtures and equipment shall be penal type.
7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.

8. All horizontal surfaces (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain.

9. All protruding corners (except at ceiling) shall be covered.

10. Ceiling, walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction.

11. Each detox cell shall have sufficient penal type fixture(s) capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.

(f) Holding areas. The purpose of these areas are for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion/holding.

1. Design features for secure holding shall include:

a. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.

b. Eight (8) feet ceiling height.

c. One (1) penal type bench per rated capacity.

d. All equipment shall be penal type.

e. One (1) penal type lavatory/commode.

f. One (1) penal type light fixture capable of providing twenty (20) foot-candles of light.

g. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.

2. If a diversion/holding area is provided, features and requirements include:

a. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;

b. Total rated capacity not to exceed twenty-four (24) persons;

c. One (1) bathroom for a rated capacity of eight (8) or less; two

(2) bathrooms for a rated capacity of nine (9) or more;

d. At least one (1) water fountain shall be located in area;

e. Phone system shall be available for use by inmates;

f. Construction shall be fire-rated with penal hardware, windows and door;

g. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire rated;

h. Unobstructed view into area shall be provided;

i. Areas shall have constant in-person surveillance;

j. If inmates housed in area during normal meal times, they shall be fed. Meals do not have to be hot; and

k. Policy and procedure shall set forth criteria for placement of inmates in this area.

(g) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

1. Minimum dimension shall be eight (8) feet.

2. Minimum ceiling height shall be eight (8) feet.

3. One (1) lavatory or counter sink.

4. One (1) work counter.

5. Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.

6. One (1) or more medical examination tables.

7. Electrical power outlets shall be provided in this room.

8. All ceilings, walls, and floors shall be approved masonry, concrete or steel construction.

9. If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment.

(h) Visiting area, inmate side. The purpose is to provide secure and private visitation for the inmates. All equipment and furnishings shall be of penal type and permanently attached.

(i) Conference room. The purpose of this room is to provide space for confidential conferences between inmates and lawyers, probation officers, clergy, etc. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.

2. Walls, floors, and ceilings shall be of approved masonry, concrete or steel construction.

3. Furnishings shall be noncombustible/nontoxic as approved by the Department of Corrections [fire-rated].

(j) Multipurpose room. The purpose of this area is to provide space for assembly of inmates for specific program activities. This area shall allow at least twenty-five (25) square feet per inmate in an area with a minimum of 250 square feet. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.

2. Walls, floor, and deck [ceiling] shall be of approved masonry, concrete or steel construction.

3. Furnishings shall be noncombustible/nontoxic as approved by the Department of Corrections.

4. Ceiling shall be of approved constructions. [fire-rated.]

(k) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per inmate in an area with a minimum of 385 square feet.

(l) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

1. Compliance with standards of the State Food Service Code, 902 KAR 45:005.

2. Commercial type stoves and refrigeration units.

3. Doors and windows will be penal type.

4. Walls, floors, and ceilings will be approved fire rated masonry, concrete or steel construction.

(m) Control room. The purpose of this area is to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area will be the hub for operations within the jail. Design features shall include:

1. Doors and windows shall be of penal type.

2. Walls, floors, and ceiling shall be approved masonry, concrete or steel construction.

3. Audio and video monitors shall be located in this area.

4. Gauges, indicators, and alarms shall be located in this area.

5. Central control panels shall be located in this area.

6. This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(n) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(o) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(p) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

2. Providing ventilation to meet air exchange as required in the state health codes.

3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit).

4. Shall be of approved masonry, concrete or steel construction.

5. All furnishings and equipment shall be penal type and permanently attached.

6. Each confinement area shall have floor drains to service each living area.

7. Be equipped with an approved securable food pass.

8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(q) All cells and housing areas design features shall include:

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1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area. Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

2. Depending on the size of jail one (1) or more isolation single-man cells shall be provided.

3. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

4. Each cell shall contain:

a. A penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

b. A penal type light fixture with controls nonaccessible to inmates unless it has staff override.

5. The jail shall provide living space for low security inmates including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they must include:

a. Fifty (50) feet per inmate.

b. One (1) commode/lavatory/drinking fountain per eight (8) inmates.

c. One (1) shower per sixteen (16) [~~fifteen (15)~~] inmates.

d. Sufficient tables and benches to handle the number of inmates housed in the dorm.

e. One (1) penal type storage area for personal property per inmate.

f. One (1) penal type bunk secured to the floor or wall per inmate.

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per inmate.

b. One (1) commode per eight (8) inmates.

c. One (1) lavatory per eight (8) inmates.

d. One (1) drinking fountain per sixteen (16) [~~fifteen (15)~~] inmates.

e. One (1) shower per sixteen (16) [~~fifteen (15)~~] inmates.

f. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.

(2) The provisions of this section shall be effective as of January 1, 1983.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities

(Proposed Amendment)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Department of Corrections [Cabinet] shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

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- (a) Inmate rules and regulations;
- (b) Staffing;
- (c) Searches of inmate and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Inmate head counts;
- (g) Surveillance checks;
- (h) Emergency situations; and
- (i) Jail schedule;
- (j) Administering medication.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of inmates:

- (a) Suicidal;
- (b) Assaultive;
- (c) Escape risk;
- (d) Mentally or emotionally disturbed;
- (e) Inmates in segregation;
- (f) Inmates in detox cell;
- (g) Juveniles, if housed in the jail; and
- (h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances so determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) Unless under the direct supervision of staff, an inmate shall not [At no time shall any inmate] be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.

(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) No inmate placed in physical restraints shall be left unattended.

(14) All jails shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No inmate shall be permitted to handle keys used to operate jail security locks.

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.

(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices such as electrical switches or levers.

(i) Locks to outside exits shall be keyed differently from interior locks. Locks to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) At no time shall a trusty have access to or control of weapons.

(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.

(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

(1) Use of force.

(2) Disciplinary actions.

(3) Medical or mental health treatment.

(4) Feeding schedule and menus.

(5) Extraordinary occurrences.

(a) Fires.

(b) Assaults.

(c) Suicide or attempted suicide.

(d) Escape or attempted escape.

(6) Inmate vandalism.

(a) Destruction of jail property.

(b) Flooding of plumbing fixtures.

(7) Staff roster for each shift.

(8) Telephone log of initial phone call(s).

(9) Visitors log.

(10) Fire planning sessions.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General

ADMINISTRATIVE REGISTER - 1852

Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendments)

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the proper delivery of medical services in jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(5) Inmates shall not perform any medical functions within the jail.

(6) Inmates shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(7) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(8) Medical screening shall be performed by the receiving officer on all inmates upon their admission to the jail and before their placement in inmate living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behavioral observation, state of consciousness and mental status.

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of inmates to qualified medical personnel on an emergency basis.

(9) Sick call conducted by the medical authority shall be available to each inmate as follows:

(a) Facilities with fewer than 100 inmates hold sick call one (1) day per week, at a minimum.

(b) Facilities with 100 to 300 inmates hold sick call three (3) days per week, at a minimum.

(c) Facilities with more than 300 inmates hold sick call four (4) days per week, at a minimum. [Once per week, in jails with an average daily population for the preceding month of less than fifty (50) inmates.

(b) Three (3) times per week, in jails with an average daily population for the preceding month from fifty one (51) to 200 inmates.

(e) Five (5) times per week, in jails with an average daily population for the preceding month of more than 200 inmates.]

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the Ameri-

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can Red Cross.

(11) At least one (1) jail staff member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation). (January 1, 1984)

(12) Emergency medical, dental, and psychiatric care shall be available to all inmates commensurate with the level of such care available to the community.

(13) Medical research shall not be permitted on any inmate in the jail.

(14) Access to the inmate's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the jail.

(15) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for inmate care. In the case of minors, the informed consent of the parent, guardian, or legal custodian shall apply when required by law.

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all inmates who die while in the custody of the jailer.

(17) The jailer shall have written delousing procedures.

(18) All jail staff who administer medications to inmates shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The jail shall have first aid kits available at all times.

(20) An inmate who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 3:100. Food services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for proper food services in local jails.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile inmates shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Inmates shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) A staff member shall directly supervise all food prepared

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within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) No food shall be prepared in inmate living areas, however, canteen food items may be stored in reasonable amounts. [Feed shall not be prepared or stored in inmate living areas.]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

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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.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities

(Proposed Amendment)

501 KAR 3:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) Any person in need of emergency medical attention shall not be admitted to the jail until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the jail staff member on duty.

(2) The jail staff shall assure that each inmate is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;

(b) Name, alias, nickname;

(c) Official charge - cite five (5) digit UOR [eight (8) digit KRS] number;

(d) Authority ordering commitment;

(e) Unit of government to be billed;

(f) Signature and title of arresting or committing officer;

(g) Date of birth;

(h) Race;

(i) Sex;

(j) Height and weight;

(k) Current or last known address;

(l) Telephone number;

(m) Marital status;

(n) Spouse or next of kin;

(o) Emergency contact (name, relation, address, telephone number);

(p) Employer, place of employment, telephone number;

(q) Social Security number;

(r) Health status (including current medications, known allergies, diet or other special medical needs);

(s) Blood type, if known;

(t) The name of any known person in the jail who might be a threat to the arrestee; and

(u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).

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(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall be done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(5) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property which is taken from the inmate upon admission shall be listed by complete description on a receipt form, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate and kept for the jail record.

(b) If the inmate is in an inebriated state, is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each inmate.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

(b) Rules of inmate conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and

(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Department of Corrections [Cabinet] personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state

jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this

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administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 3:130. Inmate programs; services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for inmate programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced inmates who perform work as authorized by KRS 441.125 [441.068] may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure which encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

Section 3. Library Services. Where resources are available in the community, library services may be made available to all inmates.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights of inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in at least [an average of] one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week when weather permits. Inmates who pose a threat to the safety and security of the jail may be denied outdoor recreation. [Where the security and safety of the jail and the weather permits, there shall be outdoor exercise.]

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as

holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(Proposed Amendment)

501 KAR 3:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 441

STATUTORY AUTHORITY: KRS 441.013

NECESSITY AND FUNCTION: The Commissioner [Secretary] of the [Kentucky] Department of Corrections [Cabinet] is authorized by KRS 441.075(3) [441.013(3)] to hear matters covered by the order of the department [Cabinet] requesting county jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 [441.041] and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Commissioner [Secretary]" means the Commissioner [Secretary] of the Department of Corrections [Cabinet].

(2) "Department [Cabinet]" means the [Kentucky] Department of Corrections [Cabinet].

(3) "Standards" means the minimum jail standards for local jails.

(4) "Hearing officer" means a hearing officer appointed by the commissioner [secretary] pursuant to KRS 441.075 [441.043].

(5) "Proceeding" means any proceeding before the commissioner [secretary] or before a hearing officer.

(6) "Day" means a calendar day.

(7) "Order" means the order of the commissioner [secretary] requiring the petitioner(s) to comply with the minimum jail standards for local jails as specified.

(8) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's [secretary's] order.

(9) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.075(3) [441.013(3)], cases coming before the commissioner [secretary] may be assigned to a hearing officer within the discretion of the commissioner [secretary] for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner [secretary].

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner [secretary], if dismissed or disposed of as provided in subsection (1) of this section, or any modification or repeal of the initial order, shall become the final order of the commissioner [secretary] under the provisions of KRS 441.013(3), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the county jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the commissioner [secretary] or his designee on the matters covered by said order to the Commissioner [Secretary] of the Department of Corrections, State Office Building, Fifth Floor, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and intervenors and all proof must be presented at the time of hearing. No additional

evidence will be permitted thereafter except in unusual circumstances and within the discretion of the commissioner [secretary] or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner [secretary].

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the department [cabinet] and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period begins to run on the next working day. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next working day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Where service of a pleading or documents is by mail pursuant to Section 2 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and intervenors within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner [secretary] or his designee. No hearing shall be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 6. Continuance of Hearing. (1) Continuance of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing. The request for continuance must include the reasons therefor.

(3) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional continuance may be granted without approval of the commissioner [secretary].

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing must be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner [secretary] or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the

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commissioner's [secretary's] own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervenor, the commissioner [secretary] or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commissioner [secretary] or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commissioner [secretary] or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 11. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commissioner [secretary] or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner [secretary].

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner [secretary] or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commissioner [secretary] or the hearing officer may issue

a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the commissioner [secretary] or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the commissioner [secretary] within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner [secretary] or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the commissioner [secretary] or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervenor fails to comply with an order of the commissioner [secretary] or the hearing officer to permit discovery in accordance with the provisions of these rules, the commissioner [secretary] or the hearing officer may issue appropriate orders.

Section 20. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party.

Section 21. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 22. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the department [cabinet]; to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

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

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner [secretary] and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of this decision;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(8) Adjourn the hearing as the needs of justice and good administration require; and

(9) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the department [cabinet].

Section 23. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 27 of this regulation.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 24. Rules of Evidence. Hearings before the department [cabinet] and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the department [cabinet].

Section 26. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 27. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner [secretary] disposing of all issues before him.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.

(3) The commissioner [secretary] shall, within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

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3. Additional factors increasing or decreasing costs: Same as 2(a)1.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

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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.

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(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

ADMINISTRATIVE REGISTER - 1860

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities including correctional facilities, defined in KRS 67B.020 operated by and under the supervision of any county, regional jail authority, city or urban county government. These regulations address those jails housing inmates for a maximum period of ninety-six (96) hours excluding weekends and holidays.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of prisoners in the jail.

(4) "Inmate" means any adult person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

- (a) Charged with or convicted of an offense; or
- (b) Held for extradition or as a material witness; or
- (c) Confined for any reason.

(5) "Department [Cabinet]" means the Department of Corrections [Cabinet].

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(9) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(10) "Special needs inmate" is any person with a notable physical, mental or emotional handicap or any person who poses a threat to himself or other inmates; any person who requires maximum security or isolation; and any person charged with 202A.

(11) "Penal type" means furnishings approved by the Department of Corrections [Cabinet].

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
 - (a) Direct and indirect costs or savings to those affected:
 - 1. First year: None
 - 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

(2) When female inmates are lodged in the jail, the jail shall

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provide a female deputy to perform twenty-four (24) hour awake supervision. [female staff will be made available as needed to perform sensitive procedures to include but not limited to:

- (a) Admission; and
- (b) Searches.]

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigations to include criminal, medical, and employment history.

(2) All security employees of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the jail shall receive salaries at least equal to minimum wage ~~(the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied).~~

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.115 ~~[441.047]~~, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the Department of Corrections ~~[Cabinet]~~.

(a) Local Corrections training efforts shall be certified by the Department of Corrections ~~[Cabinet]~~.

(b) The Curriculum Advisory Committee shall advise the Department of Corrections ~~[Cabinet]~~ on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the Department of Corrections ~~[Cabinet]~~.

(2) Deputy jailers, correctional officers and other employees whose jobs require supervision of inmates shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Department of Corrections ~~[Cabinet]~~ on a regional or local basis.

Section 5. Physical Fitness. The jailer shall have written policy and procedures that promote the physical fitness of staff. [ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.]

Section 6. Policy Procedure. Written policy shall specify that equal employment opportunities exist for all positions.

Section 7. Code of Ethics. (1) The jailer shall make available a written code of ethics.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include but not be limited to the following:

- (a) Employees shall not:
 - 1. Exchange personal gifts or favors with inmates, their family, or friends;
 - 2. Accept any form of bribe or unlawful inducement;
 - 3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;
 - 4. Violate or disobey established rules, regulations, or lawful orders from a superior;
 - 5. Discriminate against any inmate on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
 - 6. Employ corporal punishment or unnecessary physical force;
 - 7. Subject inmates to any form of unwarranted physical or mental abuse;
 - 8. Intentionally demean or humiliate inmates;
 - 9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;
 - 10. Engage in critical discussion of staff members or inmates in the presence of inmates;
 - 11. Divulge confidential information without proper authorization;
 - 12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;
 - 13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with inmates; and

15. Inquire about, disclose, or discuss details of an inmate's crime other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, regulations, and lawful orders from superiors;

2. Treat all inmates in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

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(a) Necessity of proposed regulation if in conflict:

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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.

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(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails.

Section 1. Purpose. The purpose of this chapter is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.064 and 441.075 [441.042 and 441.043], and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections [Cabinet] shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of inmates to be housed;
- (3) Sources of financing for construction;
- (4) Laws and regulations relating to treatment of inmates;
- (5) Laws and regulations relating to facilities for inmates;
- (6) Sources of revenue for operations of the jail;
- (7) Probable cost for operation of the jail; and
- (8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance by the Department of Corrections [Cabinet]. The following criteria shall be considered in site selection including but not limited to:

- (1) Size;
- (2) Proximity to courts;
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking; and
- (7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Department of Corrections [Cabinet] for review and approval as follows:

- (1) Programming phase. This submission shall show:

- (a) Evaluation of existing facility;
 - (b) Population analysis;
 - (c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Jails;
 - (d) Staffing analysis to include construction and operation costs;
 - (e) Cost analysis;
 - (f) Financing alternatives, if applicable;
 - (g) A design construction time schedule;
 - (h) Summary and recommendations; and
 - (i) [(h)] This phase is submitted on major renovation or new construction only and for information review purposes.
- (2) Schematic phase.
- (a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
 - (b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;
 - (c) Documentation of site as to:
 1. Size;
 2. Proximity to courts;
 3. Proximity to community resources;
 4. Availability of public transportation;
 5. Environmental health;
 6. Adequate parking; and
 7. Provisions of future expansion.
 - (d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
 - (e) Scale elevation drawings of all exterior walls; and
 - (f) Schematic cost estimate to include revised construction and operation costs;
- (g) A revised design-construction time schedule.
- (3) Design development phase.
- (a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
 - (b) All necessary construction drawings including construction details;
 - (c) Specifications for all materials and workmanship;
 - (d) A proposed contract with general and special conditions;
 - (e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
 - (f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
- (4) Construction document phase.
- (a) Revised design development construction drawings following review by all applicable agencies.
 - (b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections [Cabinet].
 - (c) Revised design development specifications of material and workmanship following review by all applicable agencies.
 - (5) Contract administration.
 - (a) Signed copies of all contracts for construction, financing and bonding;
 - (b) Signed copies of all construction permits;
 - (c) Documentation of review by all other applicable state agencies; and
 - (d) All change orders must be submitted to the Department of Corrections [Cabinet] for review and approval.
 - (6) The Department of Corrections [Cabinet] will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (5)(d) of this section has been approved.
 - (7) Depending on the site of the proposed constructions, renovation or addition the Department of Corrections [Cabinet] may

combine two (2) or more phases as outlined above for review and approval.

(8) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and/or graphic addenda, field orders and change orders. In addition a set of accurate as built drawings shall be submitted to Corrections within sixty (60) days of occupancy of the facility.

Section 5. Waiver of Compliance. (1) The Department of Corrections [Cabinet] may grant a waiver of the implementation of the physical plant standards for an existing jail if the department [cabinet] determines:

- (a) That strict compliance will cause unreasonable difficulties;
- (b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations of the jail; and
- (c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections [Cabinet]. The written request shall include the following information:

- (a) Citation of the specific standard involved;
- (b) Identification and description of the specific difficulties involved in meeting strict compliance;
- (c) Description of the alternative proposed; and
- (d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Department of Corrections [Cabinet], shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department [cabinet] as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(1) Entrance. The purpose of this entrance is to provide secure and private access to the jail for incoming inmates. This entrance ~~[must be serviced by a walk-in vestibule and]~~ shall incorporate the following design features:

- (a) Be located adjacent to the booking area;
 - (b) Be monitored from the booking area;
 - ~~[(c) Be free of steps or other obstacles;~~
 - ~~(d) Be protected from inclement weather; and]~~
 - (c) ~~[(e)]~~ Have a security penal type pistol locker in the vestibule.
- (2) Exits. All openings in the facility shall be secured with penal devices.

(3) Administrative areas. This area will provide space ~~[outside the secured area of the jail]~~ to house the administrative offices and to accommodate the public. The Department of Corrections [Cabinet] may permit these areas to be combined. This shall contain the following:

- (a) Waiting area. To provide space for the general public which is protected from inclement weather. This area may have toilet facilities and drinking fountains.
- (b) Visiting area, public side. This area shall provide for private communication with inmates and be located in close proximity to the

waiting area. This area is not required in jails housing inmates less than twelve (12) hours. ~~[All furnishings of this area shall be penal type and permanently attached.]~~

(4) Security area. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas:

- (a) Booking/operations area. The purpose is to provide an operational area to carry out admission and release procedures and to control all movement within the jail. Design features shall include:
 - 1. Doors and windows shall be penal type;
 - 2. Walls, floors, and ceilings shall be approved masonry, concrete or steel construction;

- 3. Audio and video monitors shall be located in this area;
- ~~4. Gauges, indicators, and alarms shall be located in this area;~~
- ~~5. Central control panels shall be located in this area.]~~

(b) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(c) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the event of an emergency situation.

(d) Detoxification area. The purpose is to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

- 1. A minimum of fifty (50) square feet per inmate;
- 2. A minimum of eight (8) feet ceiling height;
- 3. One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate;
- 4. An approved penal commode/lavatory and a ~~[flush]~~ floor drain ~~[controlled from outside the cell];~~
- 5. A bubble-type drinking fountain;
- 6. All fixtures and equipment shall be penal type;
- 7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions;
- 8. All horizontal surfaces (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain;
- 9. All protruding corners (except at ceiling) shall be coved; and
- 10. Ceiling, walls, surfaces of the wall base, and floors shall be of approved masonry, concrete or steel construction.

11. Each detox cell shall have sufficient penal type fixture(s) capable of providing lighting adequate for staff surveillance of the area. ~~[twenty (20) foot candles of light with a nightlight capable of providing five (5) foot candles of light.]~~

(e) Holding areas. The purpose of this area is for temporary detention. This area is considered optional for a ninety-six (96) hour holdover. Design features shall include:

- 1. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet;
- 2. Eight (8) feet ceiling height;
- 3. One (1) penal bench per rated capacity;
- 4. All equipment shall be penal type;
- 5. One (1) approved penal type lavatory/commode;
- 6. One (1) penal type light fixture capable of providing twenty (20) foot-candles of light;

7. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.

(f) ~~[Multiuse room. The purpose of this area is to provide space for medical examinations, confidential conferences and other uses. Design features shall include:~~

- ~~1. Doors, windows, and light fixtures shall be penal type; and~~
- ~~2. Walls, floor, and ceiling shall be of approved masonry, concrete or steel construction.~~
- ~~3. Furnishings shall be fire-rated.~~

(g) Visiting area, inmate side. The purpose is to provide secure and private visitation for the inmates. All equipment and furnishings shall be penal type and permanently attached. This area shall not be

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required in jails housing inmates for a maximum of twelve (12) hours or less.

(g) [(h)] Kitchen facilities and services shall comply with the Kentucky Food Service Code.

(5) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

(a) Providing sufficient natural or artificial light to provide twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light;

(b) Providing ventilation to meet air exchange as required in the state health codes;

(c) Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit);

(d) Shall be of approved masonry, concrete or steel construction;

(e) All furnishings and equipment shall be penal type and permanently attached;

(f) Each confinement area shall have approved floor drains to service each living area;

(g) Be equipped with an approved securable food pass; and

(h) Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(6) All cells and housing areas design features shall include:

(a) Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area.

(b) Cells may open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

(c) Each cell shall contain:

1. A penal type commode, lavatory and drinking fountain, penal type bunks secured to the floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

2. A light fixture of penal type with controls nonaccessible to inmates.

(d) Each dayroom area shall contain:

1. Thirty-five (35) square feet per inmate;

2. One (1) commode per eight (8) inmates;

3. One (1) lavatory per eight (8) inmates;

4. One (1) drinking fountain per sixteen (16) ~~fifteen (15)~~ inmates;

5. One (1) shower per sixteen (16) ~~fifteen (15)~~ inmates; and

6. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.

(e) Multioccupancy area. The jail may provide living space for low security inmates. This area shall be either cells opening into a dayroom or a combination of this and multiple occupancy dorms. If dorms are used, they must include:

1. Fifty (50) feet per inmate;

2. One (1) commode/lavatory/drinking fountain per eight (8) inmates;

3. One (1) shower per sixteen (16) ~~fifteen (15)~~ inmates;

4. Sufficient tables and benches to handle the number of inmates housed in the dorm;

5. One (1) penal type storage area for personal property per inmate; and

6. One (1) penal type bunk secured to the floor or wall per inmate.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General

Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

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Revenues (+/-): 0

Expenditures (+/-): 0

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DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jail operations.

(2) The Department of Corrections [Cabinet] shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policy and procedures shall include but not be limited to:

- (a) Inmate rules and regulations;
- (b) Staffing;
- (c) Searches of inmate and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Inmate head counts;
- (g) Surveillance checks;
- (h) Emergency situations;
- (i) Jail schedule;
- (j) Administering medication.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on inmates in detox cell.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility area accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances as determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure that they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) Unless under the direct supervision of staff, an inmate shall not ~~At no time shall any inmate~~ be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(10) Written procedures shall be developed for transporting outside the jail.

(11) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(12) No inmate placed in physical restraints shall be left unattended.

(13) All jails shall have key control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times;

(b) An accounting procedure for issuing and returning keys;

(c) A procedure for immediate reporting and repairing of any broken or malfunctioning key or lock;

(d) A set of duplicate keys to be maintained in a separate, secure place;

(e) No inmate shall be permitted to handle keys used to operate jail security locks;

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area;

(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer;

(h) Precautions similar to those outlined above shall be taken to ensure the security of all nonkey operated locking devices such as electrical switches or levers;

(i) Locks to outside exits shall be keyed differently from interior locks.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

(1) Use of force;

(2) Disciplinary actions;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences:

(a) Fires;

(b) Assaults;

(c) Suicide or attempted suicide;

(d) Escape or attempted escape;

(6) Inmate vandalism:

(a) Destruction of jail property;

(b) Flooding of plumbing fixtures;

(7) Staff roster for each shift;

(8) Telephone log of initial phone call(s);

(9) Visitors' log;

(10) Fire planning sessions.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office

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Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
 - (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

- (1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
- (2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.
- (3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.
- (4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
 - Revenues (+/-): 0
 - Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

501 KAR 4:070. Safety; emergency procedures.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth safety and emergency procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which specifies fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:

- (a) Provision for fire emergency planning sessions for staff at least quarterly;
 - (b) Written documentation of fire planning sessions;
 - (c) A fire safety inspection by the Department of Corrections [Cabinet] at least once a year;
 - (d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly;
 - (e) Smoking restrictions and regulations; and
 - (f) Written evacuation plan coordinated with local fire officials.
- (2) Each jail shall have written policy and procedures for emergency situations including but not limited to:
- (a) Escapes;
 - (b) Taking of hostages;
 - (c) Riots;
 - (d) Food poisoning;
 - (e) Civil disturbances in the community;
 - (f) Natural disasters;
 - (g) Suicides; and
 - (h) Other death and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.

(2) Each jail shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights and communications in an emergency situation.

(4) In all areas where an inmate may be confined each jail shall be provided with and emergency smoke evacuation system activated by smoke detectors.

(5) Each jail shall have an approved fire alarm and smoke detection system which meets the National Fire Safety Code (1981 edition, Chapters 14 and 15).

(6) Guages, indicators, and alarms shall be located in an area that can be readily monitored.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:100. Food services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the

Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the delivery of proper food services in jails.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Services Establishment Act and State Food Service Code (KRS 219.019 through KRS 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2400 calories per day.

(3) Inmates shall receive three (3) meals per day. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) A staff member shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) The jail shall have sufficient cold and dry food storage facilities if food is prepared in jail.

(12) The jailer or his designee shall inspect the food services area daily.

(13) No food shall be prepared in inmate living areas, however, canteen food items may be stored in reasonable amounts. ~~[Food shall not be prepared or stored in inmate living areas.]~~

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 4:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedures. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual. The policy shall address the identification of special needs offenders and their immediate transfer to a full service jail.

Section 2. Admission. (1) Any person in need of emergency medical attention shall not be admitted to the jail until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the jail staff member on duty.

(2) Special needs inmates shall not be housed in the facility, rather they shall be transported directly to a full service facility.

(3) The jail staff shall ensure that each inmate is committed under proper legal authority by a duly authorized officer.

(4) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;

(b) Name, alias, nickname;

(c) Official charge - cite five (5) digit UOR number [eight (8) KRS No.];

(d) Authority ordering commitment;

(e) Unit of government to be billed;

(f) Signature and title of arresting or committing officer;

(g) Date of birth;

(h) Race;

(i) Sex;

(j) Height and weight;

(k) Current or last known address;

(l) Telephone number;

(m) Marital status;

(n) Spouse or next of kin;

(o) Emergency contact (name, relation, address, telephone number);

(p) Employer, place of employment, telephone number;

(q) Social Security Number;

(r) Health status (including current medications, known allergies, diets or other special medical needs);

(s) Blood type, if known;

(t) The name of any known person in the jail who might be a threat to the arrestee; and

(u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment and medication).

(5) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall be done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags" and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(6) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any case or personal property which is taken from the inmate upon admission shall be listed by complete description on a receipt form, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate.

(b) If the inmate is in an inebriated state, there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each inmate.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail

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procedures, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

- (b) Rules of inmate conduct;
- (c) Disciplinary procedures; and
- (d) Procedures for making requests or registering complaints with the jail staff, judiciary, or Department of Corrections [Cabinet] personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified and the property transferred shall be properly receipted.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release from custody or to the receiving authority.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities
(Proposed Amendment)

501 KAR 4:140. Inmates rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to ensure inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of inmate rights which shall include but not be limited to:

- (a) Access to courts;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievances;
- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Mental health care (if possible);
- (j) Religion; and
- (k) Medical care.

The statement of inmate rights shall be posted in a conspicuous place in the booking and inmate living areas of the jail.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process.

(3) The jailer shall ensure the rights of inmates to have confidential access to their attorney and their authorized representative.

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(4) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include but not be limited to:

(a) At least one (1) visit per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(b) Visits shall not be less than fifteen (15) minutes.

(c) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(d) Children, when accompanied by an adult, shall be permitted to visit inmates.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation.

(7) Inmates shall not be restricted in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security;

(b) The visitor has a past history of disruptive conduct at the jail;

(c) The visitor is under the influence of alcohol or drugs;

(d) The visitor refuses to submit to search or show proper identification; or

(e) The inmate refuses the visit.

(8) The jailer shall not listen to visitor's conversations but may observe the visitation for security reasons.

(9) An area for private confidential conferences shall be provided.

Section 2. Mail. (1) The jailer shall have written policy and procedures for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail.

(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence.

(3) Incoming mail may be inspected for contraband items prior to delivery unless such mail is received from the courts, attorney of record or public officials, then it may be opened and inspected in the presence of the inmate.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each inmate at least one (1) personal phone call during their stay in the jail. Any expense incurred for calls shall be borne by this inmate or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limits necessary to maintain institution order and security.

(2) Inmates shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) Inmates shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs and Services. The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written inmate grievance procedure whereby an inmate may express his grievance to the jailer. These procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints;

(2) Equal access to all inmates;

(3) Guarantees against reprisal; and

(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of inmates and staff and security of the jail.

(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to the extent possible.

(3) All strip searches shall be performed by a staff person of the same sex.

Section 8. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining a discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each inmate shall be afforded access to necessary medical care.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

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 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 January 15, 1993 [~~December 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 12/16/92)~~]
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 12/16/92)~~]
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
KSR 10-00-11 Unit D - Behavior Problem Control
KSR 10-00-13 Unit D - Property Room Access
KSR 10-01-01 Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02 Unit D - General Operational Procedures
KSR 10-01-03 Unit D - Inmate Tracking System and Records System
KSR 10-01-04 Unit D - Administrative Segregation
KSR 10-01-05 Unit D - Disciplinary Segregation
KSR 10-01-06 Unit D - Protective Custody
KSR 10-01-07 Unit D - Geriatrics
KSR 10-01-08 Unit D - Safekeepers
KSR 10-01-09 Unit D - Hold Ticket Residents
KSR 10-02-01 Mental Health Staffing Pattern
KSR 10-02-02 Unit E Designated Staff Visits
KSR 10-02-03 Unit E-1 Convalescent Care
KSR 10-02-04 Unit E-General Operating Procedures

ADMINISTRATIVE REGISTER - 1872

KSR 11-00-01	Meal Planning for the General Population	KSR 18-00-06	Residents Adjudicated Guilty but Mentally Ill
KSR 11-00-02	Special Diets	KSR 18-00-07	Classification and Special Notice Form
KSR 11-00-03	Food Service Inspections	KSR 19-00-01	Kentucky State Reformatory Placement Committee
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates	KSR 19-00-02	Inmate Work Incentives
KSR 11-00-06	Health Standards/Regulations for Food Service Employees	KSR 19-00-03	On-the-job Training Program
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates	KSR 19-00-05	Safety Inspections of Inmate Work Assignment Locations [(Amended 12/15/92)]
KSR 12-00-01	Inmate Summer Dress Regulations	KSR 20-00-01	Food Service On-The-Job Training and Workers Rules
KSR 12-00-03	State Items Issued to Inmates	KSR 20-00-04	Technical and Adult Basic Level Learning Center Programs
KSR 12-00-07	Regulations for Inmate Barbershop	KSR 21-00-01	Criteria for Participation in A College Program
KSR 12-00-09	Treatment of Inmates with Body Lice	KSR 21-00-02	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 13-00-02	Hospital Operations, Rules and Regulations [Amended 12/15/92]	KSR 21-00-03	Inmate Library Services
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds	KSR 21-00-03	Library Services for Unit D
KSR 13-00-04	Medical and Dental Care	KSR 22-00-03	Inmate Organizations
KSR 13-00-05	Medical Records	KSR 22-00-07	Inmate Magazine
KSR 13-00-08	Institutional Laboratory Procedures	KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 13-00-09	Institutional Pharmacy Procedures	KSR 23-00-03	Religious Programming
KSR 13-00-10	Requirements for Medical Personnel	KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 13-00-11	Health Evaluation	KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 13-00-12	Vision Care/Optomety Services	KSR 25-00-03	Preparole Progress Report
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 (Amended 1/15/93)		
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		

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: January 15, 1993

FILED WITH LRC: January 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 22, 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: 527 employees of the Kentucky State Reformatory, 1409 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

ADMINISTRATIVE REGISTER - 1873

in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections (Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections [Cabinet] the following policies and procedures, revised January 15, 1993 [~~May 15, 1992~~] are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections [Cabinet], State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-12-01 Duty Officer Responsibilities
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds
LLCC 02-01-04 Fiscal Management: Insurance
LLCC 02-03-01 Fiscal Management: Audits
LLCC 08-01-01 Offender Records (Amended 1/15/93)
LLCC 08-04-01 Storage of Expunged Records (Amended 1/15/93)
LLCC 08-05-01 Psychological and Psychiatric Reports (Amended 1/15/93)
LLCC 10-03-09 Duties and Responsibilities of Building 1 and 2 Officer
~~LLCC 11-03-01 LLCC Population Categories (Deleted 1/15/93)~~
~~LLCC 11-07-01 Adjustment Procedures for Minor Rule Violations (Deleted 1/15/93)~~
LLCC 11-09-01 Rules and Regulations of the Unit (Amended 1/15/93)
LLCC 11-13-01 Inmate Dress and Use of Access Areas (Amended 1/15/93)
~~LLCC 11-15-01 Postparole Furloughs (Deleted 1/15/93)~~
~~LLCC 11-16-01 Restoration of Forfeited Good Time (Deleted 1/15/93)~~
LLCC 11-18-02 Use of Monitor Telephone
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property (Amended 1/15/93)
LLCC 11-20-01 Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01 Special Management Inmates (Amended 1/15/93)
~~LLCC 12-01-02 Disciplinary Segregation Time Calculation (WTR) (Deleted 1/15/93)~~
LLCC 13-01-01 Dining Room Guidelines (Amended 1/15/93)
LLCC 13-04-01 Food Service: Meals (Amended 1/15/93)

LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 1/15/93)
LLCC 13-05-02 Medical Screening of Food Handlers (Amended 1/15/93)
LLCC 13-06-01 Food Service: Inspections and Sanitation (Amended 1/15/93)
LLCC 13-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 1/15/93)
LLCC 13-08-01 OJT Food Service Training Placement
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01 Institutional Inspections
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01 Mental Health/Psychological Services
LLCC 15-03-01 Pharmacy
LLCC 15-03-02 Use of Psychotropic Medications
LLCC 15-04-01 Dental Services
LLCC 15-05-02 Licensure and Training Standards
LLCC 15-06-02 Specialized Health Services
LLCC 15-06-03 Emergency Medical/Dental Care Services
LLCC 15-06-04 First Aid/CPR Training Program
LLCC 15-06-05 Suicide Prevention and Intervention Program
LLCC 15-07-01 Health Records
LLCC 15-08-01 Special Diets
LLCC 15-12-01 Special Needs Unit
LLCC 15-14-01 Informed Consent
LLCC 15-15-01 Medical Restraints
LLCC 15-16-01 Health Education/Special Health Programs
LLCC 15-17-01 Serious and Infectious Diseases
LLCC 16-01-01 Inmate Rights and Responsibilities
~~LLCC 16-02-01 Inmate Grievance Procedure (Deleted 1/15/93)~~
LLCC 16-03-01 Inmate Legal Services
~~LLCC 17-01-01 Due Process/Disciplinary Procedure (Deleted 1/15/93)~~
LLCC 18-01-01 Inmate Correspondence
LLCC 18-01-02 Issuance of Legal Mail to Inmate Population
LLCC 18-02-01 Inmate Visiting
LLCC 18-02-03 Extended Visit and Furloughs
LLCC 18-02-04 Meritorious Visits
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 20-01-01 Personal Property Control
~~LLCC 20-02-01 Authorized Inmate Personal Property (Deleted 1/15/93)~~
~~LLCC 20-03-01 Unauthorized Items (Deleted 1/15/93)~~
LLCC 20-04-02 Inmate Canteen
LLCC 20-04-03 Canteen Purchase Limits
LLCC 20-05-01 Inmate Control of Personal Funds
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03 Theft of Inmate Personal Property
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01 Classification/Security Levels
LLCC 21-03-01 Classification Process
LLCC 22-01-01 OJT/Job Assignments
LLCC 23-01-01 Academic School
LLCC 26-01-01 Religious Services
LLCC 28-01-01 Privileged Trips
LLCC 28-03-01 Temporary Release/Community Center Release
LLCC 28-04-01 Parole Progress Report
LLCC 28-04-02 Parole Eligibility Dates

ADMINISTRATIVE REGISTER - 1874

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: January 15, 1993

FILED WITH LRC: January 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 22, 1993, at 9 a.m., in the Auditorium of the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 300 employees of the Luther Luckett Correctional Complex, 1,056 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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Department of Corrections
(Proposed Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner [secretary] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [cabinet] or any division therein. These 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 January 15, 1993 [~~June 15, 1992~~] are incorporated by reference and shall be referred to as Roederer Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

- RFC 01-06-01 Inmate Access to and Communication with RCC Staff (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 01-08-01 Public Information and News Media Access (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 01-10-01 RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 02-01-01 Fiscal Management: Organization [(~~Revised 6/15/92~~)]
- RFC 02-01-02 Fiscal Management: Accounting Procedures [(~~Revised 6/15/92~~)]
- RFC 02-01-03 Fiscal Management: Agency Funds (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 02-01-04 Fiscal Management: Insurance [(~~Revised 6/15/92~~)]
- RFC 02-02-01 Fiscal Management: Budget [(~~Revised 6/15/92~~)]
- RFC 02-02-02 Inmate Control of Personal Funds [(~~Revised 6/15/92~~)]
- RFC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays [(~~Revised 6/15/92~~)]
- RFC 02-02-05 Inmate Canteen Services [(~~Revised 6/15/92~~)]
- RFC 02-03-01 Fiscal Management: Audits [(~~Revised 6/15/92~~)]
- RFC 02-04-01 Purchase Orders [(~~Revised 6/15/92~~)]
- RFC 02-04-02 Processing of Invoices [(~~Revised 6/15/92~~)]
- RFC 02-06-01 Property Inventory (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 03-13-01 Staff/Visitor Meals (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 04-01-01 Employee Training and Development [(~~Revised 6/15/92~~)]
- RFC 06-01-01 Offender Records [(~~Revised 6/15/92~~)]
- RFC 06-03-01 Records Release of Information [(~~Revised 6/15/92~~)]
- RFC 06-03-02 Storage of Expunged Records [(~~Revised 6/15/92~~)]
- RFC 06-03-04 Access to Psychological and Psychiatric Reports [(~~Revised 6/15/92~~)]
- RFC 06-04-01 Court Trips [(~~Revised 6/15/92~~)]
- RFC 06-04-02 Receipt of Order of Appearance [(~~Revised 6/15/92~~)]
- RFC 08-01-01 Fire Prevention (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 08-08-01 Hazardous Communication Program (Amended 1/15/93) [(~~Revised 6/15/92~~)]
- RFC 09-04-03 Duties and Responsibilities of the Fire Safety Officer [(~~Revised 6/15/92~~)]
- RFC 09-06-01 Search Policy/Disposition of Contraband (Amended 1/15/93) [~~From Outside Institutional Perimeter~~] (~~Revised 6/15/92~~)
- [RFC 09-09-02 Drug Abuse Testing (~~Revised 6/15/92~~) (~~Deleted 1/15/93~~)]
- RFC 09-09-03 Breathalyzer (~~Revised 6/15/92~~) (~~Deleted 1/15/93~~)
- RFC 09-14-01 Restricted Areas (~~Revised 6/15/92~~) (~~Deleted 1/15/93~~)
- RFC 10-01-02 Temporary Holding Cell Guidelines [(~~Revised 6/15/92~~)]
- RFC 11-01-01 Food Services: General Guidelines [(~~Revised 6/15/92~~)]

ADMINISTRATIVE REGISTER - 1875

	6/15/92]		ed 1/15/93)
RFC 11-02-01	Food Service: Security [(Revised 6/15/92)]	RFC 15-01-01	Adjustment Procedures (Deleted 1/15/93)]
RFC 11-03-01	Dining Room Guidelines (Amended 1/15/93) [(Revised 6/15/92)]	RFC 16-01-01	Inmate Visiting (Amended 1/15/93)
RFC 11-04-01	Food Service: Meals (Amended 1/15/93)	RFC 16-02-01	Telephone Communications (Amended 1/15/93)
RFC 11-04-02	Food Service: Menu, Nutrition and Special Diets (Amended 1/15/93) [(Revised 6/15/92)]	RFC 16-03-01	Mail Regulations
RFC 11-05-02	Medical Screening of Food Handlers (Amended 1/15/93) [(Revised 6/15/92)]	RFC 16-03-02	Christmas Packages
RFC 11-06-01	Food Service: Inspections and Sanitation (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-01-01	Assessment/Orientation Procedure for Intrasystem Transfers (Amended 1/15/93)
RFC 11-07-01	Food Service: Purchasing, Storage and Farm Products [(Revised 6/15/92)]	[RFC 17-02-01	Inmate Reception Process (Deleted 1/15/93)]
RFC 12-01-01	Sanitation, Living Conditions Standards, Clothing Issues (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-03-01	Inmate Personal Property and Property Control (Amended 1/15/93)
RFC 12-01-02	Bed Areas (Amended 1/15/93) [(Revised 6/15/92)]	[RFC 17-04-01	Unauthorized Items (Deleted 1/15/93)]
RFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-05-02	Housing Unit Assignment Assessment/Classification Center (Amended 1/15/93)
RFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-05-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting (Amended 1/15/93)
RFC 12-03-02	Barber Shop Services and Equipment Control (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-05-04	Assessment Center Operations Rules and Regulations (Amended 1/15/93)
RFC 12-04-01	Institutional Inspections (Amended 1/15/93) [(Revised 6/15/92)]	RFC 17-05-05	Assessment Center Operations and Reception Programs (Amended 1/15/93)
RFC 12-05-02	Use of Noncombustible Receptacle (Amended 1/15/93) [(Revised 6/15/92)]	RFC 18-01-01	Institutional Classification Committee (Amended 1/15/93)
RFC 12-06-01	Insect and Vermin Control (Amended 1/15/93) [(Revised 6/15/92)]	[RFC 18-03-01	Classification Process (Deleted 1/15/93)
RFC 13-01-01	Organization of Health Services (Amended 1/15/93)	RFC 18-03-02	Classification Program Planning (Deleted 1/15/93)
RFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call (Amended 1/15/93)	RFC 18-04-01	Instructions for Case Reviews (Deleted 1/15/93)
RFC 13-03-01	Dental Policy/Sick Call (Amended 1/15/93)	RFC 18-05-01	Transfers to Other Institutions (Deleted 1/15/93)
RFC 13-04-01	Preliminary Health Evaluation and Establishment of Inmate Medical (Amended 1/15/93)	RFC 18-06-01	Classification Document (Deleted 1/15/93)]
RFC 13-05-02	Licensure and Training Standards for Medical Department (Amended 1/15/93)	RFC 19-01-01	Job Assignments (Amended 1/15/93)
RFC 13-06-01	Suicide Prevention and Intervention Program (Amended 1/15/93)	RFC 19-02-01	Government Service Details (Amended 1/15/93)
RFC 13-06-02	First Aid and CPR Training Program (Amended 1/15/93)	RFC 20-01-01	Academic Education Program (Amended 1/15/93)
RFC 13-06-03	Emergency Medical and Dental Care Services (Amended 1/15/93) [(Revised 6/15/92)]	[RFC 20-01-02	Testing and Verification Procedure (Deleted 1/15/93)]
RFC 13-06-04	First Aid/CPR Training Program	RFC 21-01-01	Library Services
RFC 13-07-01	Health Records (Amended 1/15/93)	RFC 22-01-01	Recreation and Inmate Activities (Amended 1/15/93)
RFC 13-07-03	Use of Pharmaceutical Products (Amended 1/15/93)	[RFC 22-01-02	Recreational Equipment Check in/Check out Procedure (Deleted 1/15/93)]
RFC 13-09-01	Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death (Amended 1/15/93)	RFC 22-03-01	Inmate Clubs and Organizations (Amended 1/15/93)
RFC 13-10-01	Health Education/Special Health Programs (Amended 1/15/93)	[RFC 22-03-02	Privilege Trips (Deleted 1/15/93)]
RFC 13-11-01	Informed Consent (Amended 1/15/93)	[RFC 22-04-01	Conducting Inmate Organizational Meetings and Programs (Deleted 1/15/93)]
RFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC (Amended 1/15/93)	RFC 23-01-01	Religious Services (Amended 1/15/93)
RFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (Amended 1/15/93)	[RFC 23-03-01	Visitors for Religious Programs (Deleted 1/15/93)
RFC 13-13-01	Identification of Special Needs Inmates (Amended 1/15/93)	RFC 23-04-01	Marriage of Inmates (Deleted 1/15/93)]
RFC 13-15-01	Medical Restraints (Amended 1/15/93)	RFC 24-01-01	Social Services and Counseling Program (Amended 1/15/93)
RFC 13-16-01	Specialized Health Services (Amended 1/15/93)	[RFC 25-01-01	Expedient and Pre-release Preparation Program Description (Deleted 1/15/93)
RFC 13-17-01	Vision Care and Optometry Services (Amended 1/15/93)	RFC 25-02-01	Temporary Release or Community Center Release (Deleted 1/15/93)
RFC 13-18-01	Infection Control (Amended 1/15/93)	RFC 25-03-01	Furloughs (Deleted 1/15/93)
RFC 14-01-01	Inmate Rights and Responsibilities (Amended 1/15/93)	RFC 25-04-01	Parole Progress Report (Deleted 1/15/93)]
[RFC 14-03-01	Inmate Grievance Procedure (Deleted 1/15/93)	RFC 25-04-02	Parole Eligibility Dates
RFC 14-04-01	Inmate Participation in Authorized Research (Deleted 1/15/93)	RFC 25-05-01	Inmate Discharge Procedure (Amended 1/15/93)
		[RFC 26-01-01	Citizen Involvement and Volunteer Services Program (Deleted 1/15/93)]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: January 15, 1993

FILED WITH LRC: January 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 175 employees of the Roederer Correctional Complex, 635 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 7:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for detention facilities. This regulation sets forth personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each center shall provide twenty-four (24) hour awake supervision.

(2) When female residents are housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision. ~~[female staff shall be made available as needed to perform sensitive procedures to include but not limited to:~~

~~(a) Admission; and~~

~~(b) Searches.]~~

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the center shall be subject to a thorough background investigation to include criminal, medical, and

employment histories.

(2) All security employees of the center shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the center shall receive salaries at least equal to minimum wage ~~[the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied].~~

Section 4. Training. Deputy jailers, correctional officers and other employees whose jobs require supervision of residents shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Department of Corrections [Cabinet] on a regional or local basis.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall have written policy and procedures that promote the physical fitness of staff. ~~[ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.]~~

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include but not be limited to the following:

(a) Employees shall not:

1. Exchange personal gifts or favors with residents, their family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;

4. Violate or disobey established rules, regulations, or lawful orders from a superior;

5. Discriminate against any residents on the basis of race, religion, creed, gender, national origin, or other individual characteristics;

6. Employ corporal punishment or unnecessary physical force;

7. Subject residents to any form of unwarranted physical or mental abuse;

8. Intentionally demean or humiliate residents;

9. Bring any type of weapon or item declared as contraband into the center without proper authorization;

10. Engage in critical discussion of staff members or residents in the presence of residents;

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with residents; or

15. Inquire about, disclose, or discuss details of a resident's crime other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, regulations, and lawful orders from superiors;

2. Treat all residents in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

ADMINISTRATIVE REGISTER - 1877

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for detention facilities. This regulation sets forth standards and procedures to be followed in the design and construction of centers.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation and construction of detention facilities and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075 ~~[441.044, 441.042 and 441.043]~~, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections [Cabinet] shall provide for any county government which wishes to remodel an existing detention facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of residents to be housed;
- (3) Sources of financing for constructing;
- (4) Laws and regulations relating to treatment of residents;
- (5) Laws and regulations relating to facilities for residents;
- (6) Sources of revenue for operations of the center;
- (7) Probable cost for operation of the center; and
- (8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No center shall be built without site acceptance by the Department of Corrections [Cabinet]. The following criteria shall be considered in site selection including but not limited to:

- (1) Size;
- (2) Proximity to courts;
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking; and
- (7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any detention facility, plans and specifications shall be submitted to the Department of Corrections [Cabinet] for review and approval as follows:

- (1) Programming phase. This submission shall show:
 - (a) Evaluation of existing facility;
 - (b) Population analysis;
 - (c) Space requirements based on population analysis and standards for the facility and site outlined in these Kentucky Minimum Standards for Restricted Custody Centers;
 - (d) Staffing analysis;
 - (e) Cost analysis to include construction and operation cost;
 - (f) Financing alternatives, if applicable;
 - (g) A design-construction time schedule;
 - (h) Summary and recommendations; and
 - (i) ~~[(h)]~~ This phase is submitted on major renovation or new construction only and for information review purposes.
- (2) Schematic phase.

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(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;

(b) Scale drawings of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

(c) Documentation of site as to:

1. Size;
2. Proximity to courts;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) [8-] Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) [9-] Scale elevation drawings of all exterior walls; and

(f) [40-] Schematic cost estimate to include revised construction and operation costs;

(g) A revised design-construction time schedule.

(3) Design development phase.

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for all materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) Construction document phase.

(a) Revised design development construction drawings following review by all applicable agencies;

(b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections [Cabinet]; and

(c) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) Contract administration.

(a) Signed copies of all contracts for construction, financing and bonding;

(b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders must be submitted to the Department of Corrections [Cabinet] for review and approval.

(6) The Department of Corrections [Cabinet] will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (4) of this section has been approved.

(7) Depending on the site of the proposed construction, renovation or addition the Department of Corrections [Cabinet] may combine two (2) or more phases as outlined in this section for review and approval.

(8) All changes to the plans shall require redraws unless specifically exempted by the Department of Corrections [Cabinet]. Specifications must be rewritten to reflect changes.

Section 5. Waiver of Compliance. (1) The Department of Corrections [Cabinet] may grant a waiver of the implementation of the physical plant standards for an existing center if the department [cabinet] determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations

of the center; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections [Cabinet]. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of alternative proposed; and

(d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of residents, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the Department of Corrections [Cabinet], shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department [cabinet] as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Each center shall have two (2) separate entrances, a resident entrance and a service entrance. The Department of Corrections [Cabinet] may permit these entrances to be combined.

(a) Residents' entry. The purpose of this entrance is to provide secure and controlled access to the center for residents.

(b) Service entrance. The purpose of this entrance is to provide access to service vehicles and delivery trucks with minimum security risks. It should be located in close proximity to storage rooms and the kitchen area.

(2) All exits in the security area shall be secured.

(3) Security area. The area shall enclose all facilities and services required for or used by residents. It shall contain the following function areas:

1. Control area. This area shall be located in close proximity to the resident entrance and shall be used to monitor the movement of residents in and out of the facility.

2. Visitation. Adequate space shall be made available for contact visits between residents and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

3. Multipurpose room. The purpose of this area is to provide space for assembly of residents for specific program activities. Adequate furnishings shall be provided.

4. Conference area. The purpose of this space is to provide space for confidential conferences between residents and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

5. Living areas.

a. All sleeping rooms shall provide a minimum of fifty (50) square feet per resident. No more than twenty-four (24) [~~fifteen (15)~~] residents shall be placed in a single sleeping room.

b. Each resident has provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet/locker space for the storage of personal items.

c. Sleeping areas shall have lighting of at least twenty (20) foot-candles in reading and grooming area with a nightlight capable of providing five (5) foot-candles of light.

d. The facility shall have one (1) toilet for every eight (8) residents, one (1) wash basin for every eight (8) residents and a shower for every eight (8) residents.

e. Phone facilities are available for resident use.

f. Provide temperature ranges within comfort zones (sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit).

g. Provide ventilation to meet air exchange as required in the

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State Health Code.

6. Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the State Food Service Code. If food is not prepared in the facility, a food distribution area shall be substituted.

7. Laundry facilities. Laundry facilities to include at least one (1) washer and dryer per sixteen (16) residents shall be located at the center or a contract for such services shall be in effect.

8. Furnishings. All furnishings in the center shall be noncombustible/nontoxic as approved by Corrections. [approved fire-rated.]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as

2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this

administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 7:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for detention facilities. This regulation sets forth security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the center's operations.

(2) The Department of Corrections [Cabinet] shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(2) These policies and procedures shall include but not be limited to:

(a) Resident rules and regulations;

(b) Staffing;

(c) Searches of resident and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Resident head counts;

(g) Movement of residents;

(h) Emergency situations;

(i) Center schedule; and

(j) Administering medication.

Section 2. Resident Supervision. (1) Center personnel shall conduct rounds of the center no less than every sixty (60) minutes.

(2) There shall be at least three (3) documented resident counts every twenty-four (24) hours during which each resident's physical presence, by show of skin, or movement shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to residents for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the center shall be clearly defined in the center rules.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used

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as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances.

(3) All firearms, weapons, and chemical agents assigned to the center shall be stored in an arsenal, vault, or other room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure.

(6) Tools, supplies, and equipment which are hazardous shall be used by residents only under the direct supervision of center personnel.

(7) Unless under the direct supervision of staff, a resident shall not ~~At no time shall any resident~~ be assigned to a position of authority over any other resident or given the responsibility of providing resident services such as commissary, telephone calls, or delivery of meals.

(8) Residents shall never be permitted to perform or assist in any security duties.

(9) Residents and their belongings shall be searched whenever entering the security perimeter.

(10) Written procedures shall be developed for transporting outside the center.

(11) All centers shall have key-control procedures.

Section 4. Daily Center Log; Special Reports. (1) A daily center log shall be kept current and reflect all significant occurrences within the center. Special reports shall include:

(a) Use of force;

(b) Disciplinary actions;

(c) Medical or mental health treatment;

(d) Feeding schedule and menus;

(e) Extraordinary occurrences:

1. Fires;

2. Assaults;

3. Suicide or attempted suicide;

4. Escape or attempted escape;

(f) Resident vandalism;

1. Destruction of center property.

2. Flooding of plumbing fixtures.

(g) Staff roster for each shift;

(h) Visitors' log;

(i) Fire planning sessions.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Proposed Amendment)

501 KAR 7:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections [Cabinet] to promulgate regulations establishing minimum standards for detention facilities. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

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Section 2. Admission. (1) The center staff shall ensure that each resident is transferred under proper legal authority by a duly authorized officer.

(2) Resident records shall be delivered to the center at the time of admission. The admitting officer shall make certain that all required forms are complete and that information is current.

(3) The center staff shall conduct a search of residents and their possessions upon admission.

(a) Each resident shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow residents, staff and institutional security. Such search shall be conducted in a private area and in a manner which protects the resident's dignity to such extent as possible in that particular center.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the resident.

(c) When a strip search of a resident is conducted it shall be done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags" and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the resident is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(4) Each center shall develop written policies and procedures, specifying the personal property that residents may retain in their possession.

(a) Any cash or personal property which is taken from the resident upon admission shall be listed by complete description on a receipt form, and securely stored pending the resident's release. The receipt shall be signed by the receiving officer and the resident.

(b) Personal property released to a third party must have the resident's signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible an oral or written orientation shall be made available to each resident. Special assistance shall be given to illiterate and non-English speaking residents.

(2) The orientation shall provide the resident with information regarding his confinement including, but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the resident's confinement;

(b) Rules of resident conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services);

(e) Procedures for making requests or registering complaints with the center's staff, judiciary, and Department of Corrections [Cabinet] personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any resident from confinement.

(2) When a resident is released or removed for any legal purposes to the custody of another, the identity or receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the resident is released or removed.

(4) Prior to the release or removal of a resident, the receiving

authority shall sign an authorized release form.

(5) Before the jailer releases a resident to an out-of-state jurisdiction, he shall consult with the appropriate prosecuting office in the county.

(6) Any property, not legally confiscated or retained, receipted from the resident upon admission shall be returned to the resident at the time of release.

(7) Each resident shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

Section 5. Transfer. (1) Policy and procedure shall be developed to determine the conditions under which a resident would become ineligible to remain at the facility and must be transferred to the jail.

(2) When a resident is transferred to the jail, an incident report specifying the reasons for the transfer, the resident's record and personal property shall accompany the resident.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Proposed Amendment)

601 KAR 40:020. Application for license to operate vehicles transporting municipal solid waste.

RELATES TO: KRS 174.450

STATUTORY AUTHORITY: KRS 174.450

NECESSITY AND FUNCTION: KRS 174.450(9) requires that the Transportation Cabinet promulgate administrative regulations to establish a municipal solid waste transportation licensing program by August 26, 1991, and that on or after November 26, 1991, that each vehicle being used to transport municipal solid waste be identified by the licensee.

Section 1. (1) An applicant for a license to operate municipal solid waste transportation vehicles within the Commonwealth of Kentucky, shall apply to the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers [~~Office of General Counsel~~], 501 High Street, Frankfort, Kentucky 40622.

(2) The following information shall be provided in, or with, the application:

(a) Name in which license is sought. (NOTE: This name shall be identical to the motor carrier's current KYU number issued by the Department of Vehicle Regulation, if applicable. See question below relating to Kentucky Highway Use Tax Identification Number);

(b) Business address, including street address, city, state and zip code;

(c) Telephone number;

(d) Name of a natural person who is either the applicant, or an officer of the applicant, position of this person, Social Security number of this person and home address of this person;

(e) Number of vehicles which the licensee intends to operate;

(f) If the applicant is not a resident of Kentucky and anticipates transporting municipal solid waste from outside Kentucky to a municipal solid waste management facility in Kentucky, a copy of the applicant's "Consent to Service" document as required to be filed with the Natural Resources and Environmental Protection Cabinet;

(g) The applicant's highway use tax identification number, as required by KRS 138.665. (NOTE: If the applicant does not currently have a KYU number, it shall attach a statement of why its transportation operations do not fall within the purview of KRS 138.665);

(h) A statement that the applicant does now have, or is in the

process of obtaining, liability insurance on each vehicle in the amounts currently required by Kentucky law;

(i) A statement of whether the applicant or any corporate officer or principal stockholder thereof has ever been convicted of a felony; and

(j) If the applicant is a Kentucky corporation, a copy of the corporation's certificate of good standing from the Kentucky Secretary of State or, if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State, shall be submitted with the application. These certificates shall not be more than thirty (30) days old at the time the application is submitted. However, all corporations, whether foreign or domestic, shall submit a list of persons who own ten (10) percent or more of the corporation's outstanding stock.

(k) If the applicant is doing business under an assumed name, it shall provide proof with the application that the assumed name has been registered with the appropriate county clerk's office.

(l) The Transportation Cabinet may require other proof of eligibility to do business in Kentucky or proof of safety fitness]

(3) The official signing on behalf of the applicant shall:

(a) Be sworn;

(b) State that he has the authority to represent the applicant;

(c) State that the information is true and correct to the best of his knowledge and belief; and

(d) Have his signature and oath notarized.

(4) The Transportation Cabinet shall make available a form listing the information required in subsections (2) and (3) of this section to any person wishing to apply for a license to operate municipal solid waste transportation vehicles. These forms may be obtained, inspected or copied at the Division of Motor Carriers [~~Office of General Counsel~~], 501 High Street, Frankfort, Kentucky 40622, or by telephoning 502/564-4540 [7650].

Section 2. (1) The Transportation Cabinet shall within thirty (30) days of receipt of an application:

(a) Approve the application to operate municipal solid waste transportation vehicles;

(b) Disapprove the application; or

(c) Request additional information from the applicant.

(2) However, the Transportation Cabinet shall not issue a license to anyone who has not filed a fully completed application form.

Section 3. As soon as the applicant has been licensed to operate municipal solid waste transportation vehicles, the Transportation Cabinet shall provide a form to the licensee so that the individual municipal solid waste transportation vehicles used by that licensee can be identified. This form shall contain space for the licensee to submit the following information:

(1) The municipal solid waste transporter license number and name of the municipal solid waste transporter;

(2) KYU number (if applicable) of the licensee;

(3) Telephone number of the licensee;

(4) Address of the licensee;

(5) Licensee's contact person;

(6) A sworn and notarized statement made by an official of the licensee certifying that the named licensee has, and shall maintain, liability insurance on each vehicle operated under this license;

(7) An official of the licensee shall state that the applicant has access to, and is familiar with, all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and that the applicant shall comply with these regulations;

(8) Identification of each vehicle to be used to transport municipal solid waste which shall include the following:

(a) The vehicle's company unit number;

(b) The complete vehicle identification number (serial number);

(c) The make of vehicle;

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- (d) The year of manufacture of the vehicle;
- (e) The declared gross weight of the vehicle;
- (f) The type of truck;
- (g) The number of axles on the vehicle;
- (h) The state of license of the vehicle;
- (i) The license plate number if the vehicle is Kentucky registered and licensed;
- (j) The name of the lessor if the vehicle is leased;
- (k) The amount of the fee paid; and
- (l) Whether it is a first or renewal registration of that individual vehicle.
- (m) To identify the type of truck and number of axles, the licensee shall, for a straight truck, code the letters "ST", followed by the total number of axles. For a tractor-trailer, the licensee shall code the letters "TR", followed by the total number of axles.

Section 4. Municipal solid waste transporter vehicle identification cards shall expire at midnight of December 31 of each year.

Section 5. The fee for a municipal solid waste transporter vehicle identification card which shall become effective January 1, or a renewal of an identification card, shall be ten (10) dollars. If the newly-issued card becomes effective in a month other than January, the cost of the identification card shall be prorated by using the following schedule:

- (1) February - \$9.17;
- (2) March - \$8.34;
- (3) April - \$7.50;
- (4) May - \$6.67;
- (5) June - \$5.84;
- (6) July - \$5.00;
- (7) August - \$4.17;
- (8) September - \$3.34;
- (9) October - \$2.50;
- (10) November - \$1.67;
- (11) December - \$0.84.

Section 6. The original vehicle identification card shall be carried in the power unit of the vehicle for which it was issued. Photocopies, reproductions or facsimiles shall not be allowed.

Section 7. Even though the Transportation Cabinet does not have the authority to issue temporary identification cards for municipal solid waste transportation vehicles, the cabinet shall promptly issue identification cards to a licensee who has properly applied for the identification cards.

Section 8. The Transportation Cabinet shall notify the Natural Resources and Environmental Protection Cabinet of all persons found to be transporting municipal solid waste either:

- (1) Without a license to do so; or
- (2) Without a vehicle identification card for the transportation of municipal solid waste.

Section 9. (1) A license to operate municipal solid waste vehicles shall not be transferred.

(a) If a licensee's assets are sold or transferred to an entity who is not a current licensee, the new owner shall submit a new application pursuant to Section 1 of this administrative regulation. Prior to beginning operation as a transporter of municipal solid waste, the entity shall be licensed by the Transportation Cabinet pursuant to this administrative regulation.

(b) If the new owner holds a current license to operate as a transporter of municipal solid waste, it may operate the newly acquired motor vehicles under the provisions of its existing license as soon as a vehicle identification card is obtained in the name of the new owner.

(c) A licensee who discontinues operation as a transporter of municipal solid waste in Kentucky shall surrender his license to the Transportation Cabinet.

(2) The new owner of a municipal solid waste transportation vehicle may apply to the Transportation Cabinet for transfer of the vehicle identification card on the motor vehicle if:

(a) The motor vehicle has a current municipal solid waste transportation identification card;

(b) There is at least one (1) month before the identification card will expire;

(c) The new owner has been licensed by the Transportation Cabinet as a transporter of municipal solid waste;

(d) The new owner provides to the Transportation Cabinet a sworn statement that the licensee has and shall maintain liability insurance on the newly acquired motor vehicles; and

(e) The new owner shall state that it has access to and is familiar with all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and that the new owner shall comply with these regulations.

(3) There shall not be a cost to the licensee for the transfer of the identification card as described in subsection (2) of this section. The new owner of the municipal solid waste transportation vehicle shall be responsible for the identification card fee beginning on January 1 of the following year.

NORRIS BECKLEY, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on February 23, 1993 at 9 a.m. local prevailing time in the Transportation Cabinet, Room 1003, 10th Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by February 18, 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 February 18, 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 February 18, 1993, and 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

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: Approximately 750 transporters of municipal solid waste in Kentucky are affected by the total administrative regulation. However, the amendment only affects companies who have not yet applied for the license.

(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: The applicant for a license

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to transport municipal solid waste will have to send the form to the Division of Motor Carriers rather than the Office of General Counsel.

(2) Effects on the promulgating administrative body: This is an internal reorganization to place the function of reviewing the new applications with that portion of the Transportation Cabinet which issues the vehicle identification cards and the renewals. This has been done because there are so few new applications now being received. This should be a more efficient way of dealing with the on-going program.

(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: The internal reorganization was accomplished since the initial flood of applications had been dealt with and most of the municipal solid waste transporters in the Commonwealth are licensed.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. Only transporters of municipal solid waste have to be licensed by the Transportation Cabinet. Corporations have to provide more material than a partnership or sole proprietorship. A partnership or sole proprietorship must supply more information than a governmental entity in order to obtain a license.

EDUCATION AND HUMANITIES CABINET Department of Education Office of School Administration and Finance (Proposed Amendment)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS 156.160, 157.370, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370

NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the physical welfare and safety of public school children, the transportation of such children to and from school, and the operation of school buses; and KRS 157.370 references the method of calculating transportation costs for the state public school funding program. This administrative regulation establishes guidelines and procedures whereby the Department of Education, through its Division of Pupil Transportation answerable to the chief state school officer, may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes for the Fund to Support Education Excellence in Kentucky which are necessary to determine the calculated pupil transportation program cost for each district which provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8 and 9, and shall keep the curriculum up-to-date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training

curriculum.

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of thirty-three (33) ~~twenty-five (25)~~ hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the chief state school officer. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation shall have the authority to make safety inspections of any and all school buses and special type vehicles either owned by the board or contracted to the board being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, the Division of Pupil Transportation shall have the authority to prohibit further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil Transportation shall have the authority to prohibit the use of school buses or special type vehicles used for the transportation of pupils, which have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky. These vehicles shall remain out of service until approved by the Division of Pupil Transportation as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Fund to Support Education Excellence in Kentucky and the Division of Pupil Transportation in making a pupil transportation system survey for the district.

Section 8. The Division of Pupil Transportation shall be responsible for the training and approval of state school bus inspectors.

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: January 15, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 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 February 19, 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

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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: Stewart "Mike" Roscoe

(1) Type and number of entities affected: 176 local school districts.

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

1. First year: None

2. Continuing costs or savings: Possible minimal expense based upon district response.

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

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional paperwork would be borne by the Training Branch in the Division of Pupil Transportation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The increase in training hours for driver training instructors is necessary to provide CDL and forward control bus instruction.

(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: The additional training hours should account for added safety for the 460,000 Kentucky school children that ride the school bus daily.

TIERING: Is tiering applied? No. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET

Department of Education
Office of Regional Service Centers
(Proposed Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070

NECESSITY AND FUNCTION: KRS 156.095 and 156.0951

authorize the State Board for Elementary and Secondary Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, and mandate local school district consortia for professional development purposes; and KRS 158.070 requires the state board to adopt administrative regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation implements these duties and powers. It identifies the components of professional development planning and requires [by interpreting of what professional development consists and by requiring] each school, local district, and

consortium of districts to submit [have approved] annually [a master] professional development plans by which they are [it is] to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

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

(1) "Professional development" means activities and experiences which enable educators to improve their skills and abilities or increase their understanding and knowledge to better facilitate the learning of children, and which shall be determined by identified needs and related to the goals of the Kentucky Education Reform Act (KERA) [any training of certified personnel to assist them in acquiring the knowledge and skills needed to assist them in acquiring the knowledge and skills needed for instructional improvement].

(2) "Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas. ["KERA" means the Kentucky Education Reform Act.]

(3) "Professional development plan" means an outline of a process to achieve defined standards, goals, or objectives that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished. ["Components of KERA" means:

(a) Preschool program;

(b) Primary program;

(c) Kentucky's learning goals, valued outcomes, and the noncognitive school goals;

(d) Research-based instructional strategies;

(e) Development of school curricula aligned with KERA learning goals, the valued outcomes, and the noncognitive school goals;

(f) Education technology;

(g) Learning and assessment for diverse populations;

(h) School-based decision making; and

(i) Leadership development.]

[Section 2. Substance of training programs for professional development. The data, skills, and concepts comprising the substance of the training programs for professional development shall be determined by identified needs related to the components of KERA.]

Section 2. [3.] Each professional development consortium, school, and local district [board of education] shall have on file with the State Department of Education [a n-approved master] professional development plan that meets the following seven (7) standards:

(1) The goals, objectives, and sessions or experiences of plans are focused on the goals of KERA;

(2) The plan was developed through active participation and input at the local school level;

(3) The plan gives attention to professional growth needs at different stages of development (i.e., orientation, preparation, implementation, impact);

(4) The plan provides sufficient opportunities for professional growth in designated KERA goals throughout the school year;

(5) The plan provides professional development sessions, experiences, and activities that directly address the needs identified in the needs assessment;

(6) The plan describes standards and a process that ensure the delivery of high quality professional development sessions, experiences, and activities; and

(7) The plan describes a structure and process for evaluating professional development sessions, experiences, and activities and for making subsequent improvements in the professional development program.

Section 3. The professional development plan shall include the following components:

- (1) Name of consortium, ~~[local school]~~ district, or school;
- (2) Persons involved in the planning process; ~~[Name of professional development coordinator];~~
- (3) ~~Names of local school district's professional development committee, which shall be a representative body of all role groups or levels of educational personnel within the local school district;~~
- (4) Description of planning process;
- (3) ~~[(5)]~~ Description of needs assessment, including a brief description of procedures implemented to determine how the ~~[district's]~~ professional development needs were assessed and the results of the assessment;
- (4) Description of planning process;
- (5) A description of specific professional development sessions, experiences, and activities planned to accomplish the goals and objectives; and
- (6) ~~Statement of district's instructional improvement goal(s), which shall be based on identified needs and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of the instructional leaders. The training hours for instructional leaders may be completed as a part of the statewide program, either during the regular school term or during the summer;~~
- (7) ~~Statement of district's professional development objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goals and shall include but shall not be limited to the completion of the above defined requisite training hours for all instructional leaders;~~
- (8) ~~A description of specific professional development sessions/experiences; and]~~
- (6) A ~~[(9)]~~ description of evaluation, including:
 - (a) An explanation [summary] of how professional development sessions, ~~[(4)]~~ experiences, and activities implemented and operated at all levels ~~[by individual local school districts]~~ shall be evaluated; and
 - (b) A description [summary] of how the ~~[implementation of the master]~~ professional development plan shall be evaluated.

Section 4. (1) The professional development plan shall address any ~~[local district]~~ instructional improvement or training needs that are in accordance with the goals ~~[components]~~ of KERA.

(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school's ~~[district's]~~ instructional improvement goals and objectives identified in the ~~[master]~~ professional development plan.

(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only, and ~~[(;)]~~ it shall ~~[does]~~ not result in activities on snow days.

(5) Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the ~~[participating district's master]~~ professional development plan.

(6) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging.

(7) Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the date limitations of the ~~[master]~~ professional development plan.

(8) Appropriate ~~[Approvable]~~ professional development sessions, experiences, and activities shall be ~~[are]~~ those which address instructional improvement for the school district, an individual school or a group of teachers in accordance with the goals ~~[components]~~ of

KERA. Activities which are not appropriate ~~[approvable]~~ for professional development credit include~~[- but are not limited to,]~~ the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, field trips, and parent-teacher conferences~~[- and CPR training].~~

Section 5. (1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator for the local district.

(2) The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.

(3) The duties of the district professional development coordinator are as follows:

(a) Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school.

(b) Provides technical assistance to school councils or professional development committees in the establishment of a school plan for professional development for the local district.

(c) Completes, in conjunction with the consortium, a ~~[master]~~ professional development plan for inclusion in the Educational Improvement Plan.

(d) Serves as chairperson of district's Professional Development Committee.

(e) Coordinates the planning, implementation and evaluation of the professional development program in conjunction with the school and district professional development committees and the consortium.

(f) Meets regularly with administrators and teachers to establish future goals and identify specific training needs of the district's personnel.

(g) Coordinates the establishment of procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training.

(h) Maintains all professional development records, documentation~~[s]~~, and other pertinent records.

(i) Interprets the professional development programs' objectives, results, and needs to school professional development committees, district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

(j) Keeps updated on current professional development trends.

(k) Maintains continuous liaison with Kentucky Department of Education, the consortium to which the district belongs and other agencies involved with the district in the provision of professional development activities.

Section 6. By the effective date of this regulation, each local school, district, and consortium shall develop a plan for professional development ~~[plan]~~. This plan shall describe training activities which the school, district, and consortium will ~~[wish to]~~ provide for its certified staff within the goals ~~[components]~~ of KERA. The consortium plan, along with the plans of its member districts and schools shall ~~[must]~~ be submitted to the Department of Education prior to the implementation of the plans.

Section 7. Additional standards for ~~[approval of]~~ the school, district, and consortium professional development plans are ~~[located]~~ in the document "Professional Development Planning Process", dated January 1993, ~~["Planning Professional Development with a Focus on KERA: The Development and Approval Process for School Districts and Consortia"]~~ which is hereby incorporated by reference~~[- This document was approved in March 1992;]~~ and may ~~[can]~~ be obtained

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from the Division of Professional Development, 17th [48th] Floor, Capital Plaza Tower, Frankfort, Kentucky, any time between 8 a.m. - 4:30 p.m., ~~on~~ Monday through Friday.

Section 8. No more than fifteen (15) [twenty-five (25)] percent of each local district's professional development funds shall be used ~~[by the consortium]~~ for administrative purposes.

Section 9. When implementing professional development programs under KRS 158.070, each local school, district, or consortium of districts shall adhere to its ~~[approved master]~~ professional development plan as developed with technical assistance as requested [provided] from the Department of Education.

Section 10. Any school, ~~[local] district, or consortium~~ not complying with Sections 1 through 9 [8] of this administrative regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for ~~[any]~~ noncompliance.

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

THOMAS C. BOYSEN, Commissioner

APPROVED BY AGENCY: January 15, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 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 February 19, 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: Gail B. Gerry

(1) Type and number of entities affected: 176 school districts.

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

1. First year: Amount of administrative costs allowed cut from 25% (\$2,500,000) to 15% (\$1,500,000). This will result in more training dollars being channeled to districts and schools.

2. Continuing costs or savings: Same

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

(b) Reporting and paperwork requirements: Individual plans reduced to two pages, however planning documents are required from all schools for the first time this year.

(2) Effects on the promulgating administrative body: More plans to review but plans are more streamlined.

(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: Same. KDE is still responsible for analysis of evaluation and financial data.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 158.070 mandates regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation facilitates school planning.

TIERING: Is tiering applied? No. Regulation applies equally to all 176 school districts.

LABOR CABINET

Department of Workplace Standards Kentucky Occupational Safety and Health (Proposed Amendment)

803 KAR 2:301. Adoption of 29 CFR Part 1910.7-.19.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.7-.19 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.

(1) 29 CFR 1910.7, "Definition and Requirements for a Nationally Recognized Testing Laboratory," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(2) 29 CFR 1910.16(b)(2)(ix), "Longshoring and Marine Terminals," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(3) 29 CFR 1910.19(f) "Special Provisions for Air Contaminants," is removed as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.19(i), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(b) A new paragraph (i) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, is incorporated by reference.

(c) 29 CFR 1910.19(j), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(d) A new paragraph (k) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at:

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Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1993, at 10 a.m., at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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: Mrs. Erin J. Foley, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Erin Foley, Kembra Taylor

(1) Type and number of entities affected: Section 1(3)(b) amendment affects all employers in the Commonwealth with exposure to 4,4'-methylenedianiline. Section 1(3)(d) amendment affects all employers in the Commonwealth with exposure to cadmium. These amendments are not actually regulation, rather, they are references to regulations addressed in 803 KAR 2:320.

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

1. First year: There will be no cost for compliance with Section 1(3)(b) and (d) amendments.

2. Continuing costs or savings: There will be no continuing costs or savings for compliance with the amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs.

(b) Reporting and paperwork requirements: This amendment does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not affect the promulgating administrative body.

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods: reasons why alternative were rejected: No alternative methods were considered because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(3)(b) and (d) are references to proposed amendment 803 KAR 2:320.

3. Minimum or uniform standards contained in the federal mandate. Section 1(3)(b) and (d) amendments adopt all standards contained in the Federal Register, Volume 57, Number 154, August 10, 1992, and the Federal Register, Volume 57, Number 178, September 14, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendments to the Federal Registers identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(3)(b) and (d) affect all divisions of local government which involve exposure to 4,4'-methylenedianiline and cadmium.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal OSHA standards relating to occupational exposure to 4,4'-methylenedianiline and cadmium. These regulations will have no effect on the number of employees of local government.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000- .1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

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Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants," Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants," Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Number 12, January 19, 1989 are incorporated by reference.

(b) 4,4'-Methylene bis (2-chloroaniline)," found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(g) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1000, "Air Contaminants," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(2) 29 CFR 1910.1001, "Asbestos," is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(f) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(g) 29 CFR 1910.1001, "Occupational Exposure to Asbestos,

Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(h) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(i) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.

(j) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.

(k) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(l) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(m) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(n) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 57, Number 126, June 30, 1992, are incorporated by reference.

(3)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through 1016 paragraphs (c)(6), "Laboratory Activities," printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(4) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY ¹ ug/m ³	COMPLIANCE DATES		
	200 ug/m ³	100 ug/m ³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Found-	(2)	N/A	N/A

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ries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting
All Other Industries (2) N/A June 11, 1984

¹Includes ancillary activities located on the same worksite.

² On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead," as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(5) Amendments to 29 CFR 1910.1027, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(6) [(6)] 29 CFR 1910.1028, "Benzene," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(7) [(6)] 29 CFR 1910.1029, "Coke Oven Emissions," shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(8) [(7)] 29 CFR 1910.1030, "Bloodborne Pathogens," as published in the Federal Register, Volume 56, No. 235, is incorporated by reference with the following revisions, additions, or deletions:

(a) 29 CFR 1910.1030(d)(3)(ix) is amended to read: Gloves. Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

(b) 29 CFR 1910.1030(d)(3)(ix)(D) is removed.

(9) Amendments to 29 CFR 1910.1030, "Bloodborne Pathogens," as published in the Federal Register, Volume 57, Number 127, are incorporated by reference.

(10) [(9)] Corrections to 29 CFR 1910.1043, "Cotton Dust" as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(11) [(9)] Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D," as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(12) [(10)] 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(c) 29 CFR 1910.1048(i)(2) is revised to read as follows: If employees' skin may become splashed with solutions containing one 1 percent or greater formaldehyde, for example because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately. The emergency show shall be installed in accordance with 1910.151(d)(3)(c) as adopted by 803 KAR 2:310.

(d) 29 CFR 1910.1048(i)(3) is revised to read as follows: If there is any possibility that an employee's eyes may be splashed with solutions containing one-tenth (0.1) percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use. The emergency eyewash shall be installed in accordance with 1910.151(d)(3)(a) or (b) as adopted by 803 KAR 2:310.

(e) 29 CFR 1910.1048(i)(2) and (3) are effective October 1, 1992.

(f) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 57, Number 102, May 27, 1992, are incorporated by reference.

(g) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(13) [(14)] Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos," as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(14) Amendments to 29 CFR 1910.1050, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(15) Amendments to 29 CFR 1910.1101, "Asbestos," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(16) [(12)] 29 CFR 1910.1200, "Hazard Communication," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication," and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(17) [(13)] 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories," as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

(18) Amendments to 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(19) Amendments to 29 CFR 1910.1500, "Standards Organizations," as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

ADMINISTRATIVE REGISTER - 1891

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1993 at 10 a.m., at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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: Mrs. Erin J. Foley, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Erin Foley, Kembra Taylor

(1) Type and number of entities affected: Section 1(1)(g) and 1(1)(5) affect all employers in the Commonwealth with operations involving exposure to cadmium. Section 1(1)(m), 1(1)(n), and 1(14) affect employers with operations involving exposure to asbestos. Sections 1(11)(c) and 1(11)(d) affect employers with operations involving exposure to formaldehyde. Section 1(13) affects employers with operations involving exposure to 4,4'-methylenedianiline. Sections 1(8), 1(11)(d), 1(1)(17), and 1(1)(18) are "housekeeping" type corrections.

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

1. First year: Compliance with Section 1(1)(g) and 1(5) is expected to cost employers less than 0.1 percent of revenues; Sections 1(1)(m), 1(1)(n), and 1(14) involve the removal of regulation of three air contaminants, therefore, eliminating costs to employers with operations involving exposure to tremolite, anthophyllite, and actinolite; Section 1(11)(c) is expected to cost employers less than 1 percent of revenues; and because of industry-specific differences Section 1(1)(13) it is not possible to estimate costs.

2. Continuing costs or savings: Compliance with Section 1(1)(g) and 1(1)(5) is expected to cost employers less than 0.06 percent of revenues; Sections 1(1)(c) and 1(1)(13) will result in an annual cost of 25 percent of estimate in item 1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding any of these sections which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: None of these sections entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: These amendments will not affect the promulgating administrative body.

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these regulations.

(3) Assessment of anticipated effect on state and local revenues: These amendments have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No The Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(5) regulation requires Kentucky employers to comply with federal standards governing exposure to cadmium. Section 1(11)(c) regulation requires Kentucky employers to comply with federal standards governing exposure to formaldehyde. Section 1(13) regulation requires Kentucky employers to comply with federal standards governing exposure to 4,4'-methylenedianiline. Section 1(1)(m) and 1(14) involve removal of regulation. Section 1(5)(a), 1(11)(d), 1(8), 1(17), 1(18) involve "housekeeping" type corrections and are not substantive amendments.

3. Minimum or uniform standards contained in the federal mandate. Section 1(5) amendment adopts all standards contained in the Federal Register, Volume 57, Number 178, September 14, 1992; Section 1(11)(c) amendment adopts all standards contained in the Federal Register, Volume 57, Number 178, September 14, 1992; Section 1(13) amendment adopts all standards contained in the Federal Register, Volume 57, Number 154, August 10, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendments to the Federal Registers identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: These amendments impose no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(5) affects all local government entities that are within the scope of the cadmium standard. Section 1(11)(c) affects all local government entities that are within the scope of the formaldehyde standard. Section 1(13) affects all local government entities that are within the scope of the 4,4'-methylenedianiline standard. Section 1(1)(m) and 1(14) involve removal of regulation. Section 1(5)(a), 1(11)(d), 1(8), 1(17), 1(18) involve "housekeeping" type corrections and are not substantive amendments.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to cadmium, formaldehyde, and 4,4'-methylenedianiline.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

ADMINISTRATIVE REGISTER - 1892

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health (Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.63 [-59].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.63 [-59], revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(I) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(I)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(I)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(l) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(m) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(n) Amendments to 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

(3) Amendments to 29 CFR 1926.60, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(4) Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1993 at 10 a.m., at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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: Mrs. Erin J. Foley, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-2778.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Erin Foley, Kembra Taylor

(1) Type and number of entities affected: Section 1(4) affect all construction employers in the Commonwealth with operations involving exposure to cadmium. Section 1(n) affect construction employers with operations involving exposure to asbestos. Section 1(3) affects construction employers with operations involving exposure to 4,4'-methylenedianiline.

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

1. First year: Compliance with Section 1(3) is expected to cost each construction firm \$5,450 annually; Section 1(n) will result in savings because three air contaminants will not be covered by this removal of regulation; Section 1(4) is expected to cost employers less than 2.2 percent of revenues.

2. Continuing costs or savings: Compliance with Section 1(4) can only be estimated on a per job basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding any of these sections which will increase or decrease costs. There will be no effect on competitors.

(b) Reporting and paperwork requirements: None of these Sections entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: These amendments will not affect the promulgating administrative body.

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these regulations.

(3) Assessment of anticipated effect on state and local revenues: These amendments have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were considered because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

Agency Contact: Erin Foley, Kembra Taylor

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(4) regulation requires Kentucky employers to comply with federal standards governing exposure to cadmium. Section 1(3) regulation requires Kentucky employers to comply with federal standards governing exposure to 4,4'-methylenedianiline. Section 1(n) involve removal of regulation.

3. Minimum or uniform standards contained in the federal mandate. Section 1(4) amendment adopts all standards contained in the Federal Register, Volume 57, Number 178, September 14, 1992; Section 1(3) amendment adopts all standards contained in the Federal Register, Volume 57, Number 154, August 10, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the amendments to the Federal Registers identified in item three above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: These amendments impose no stricter, additional or different responsibilities than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(4) affects all local government entities that are within the scope of the cadmium standard. Section 1(3) affects all local government entities that are within the scope of the 4,4'-methylenedianiline standard. Section 1(n) involve removal of regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health in regard to their exposure to cadmium and 4,4'-methylenedianiline.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (Proposed Amendment)

815 KAR 4:010. Annual inspection of passenger elevators[; dumbwaiters, escalators and moving walks standards].

RELATES TO: KRS 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060(18) [198B.470], 198B.490, 198B.520

NECESSITY AND FUNCTION: KRS 198B.490 requires the commissioner to make rules and regulations exclusively for the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2). The function of this administrative regulation is to adopt safety standards for [which will insure that such] passenger elevators [are installed and maintained to provide reasonable safety when] used by the citizens of this Commonwealth. This amendment is necessary to formalize the department's policy that passenger elevators which comply with more recent editions of adopted standards shall be considered equivalently safe and therefore acceptable. [This amendment is necessary to upgrade the standards for elevator maintenance and installation by adopting the latest edition of the code without exception.]

Section 1. Incorporation [Adoption] of Code. (1) [The commissioner hereby adopts and incorporates by reference the American Standard "Safety Code for Elevators and [; Dumbwaiters;] Escalators (1990)", ASME [and Moving Walks, American Society of Mechanical Engineers] A17.1-1990, with the exception of rule 102.2(c)(4), is incorporated by reference. [and the safety standard for conveyors and related equipment which is published by and available from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017, which specifically details the equipment, materials, weights, gauges, lengths,

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~~widths, and quality of construction that will make elevators, escalators, and any other lifting or lowering device reasonably safe.]~~

~~(2)(a) It may [Copies are also available to] be inspected and copied at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday [between 8 a.m. and 4:30 p.m].~~

~~(b) It also may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.~~

~~(3) Compliance with a later edition of this standard shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified.~~

~~[Section 2. New Elevators. All new elevators and equipment covered by Section 1 of this regulation shall be constructed in accordance with the standards set forth in this regulation and the Kentucky Building Code. Fees shall be paid as set forth in 815 KAR 4:025.]~~

Section 2. [3.] Annual Inspection of Passenger Elevators and Escalators. Annual inspections of passenger elevators and escalators shall be conducted in accordance with the codes adopted in Section 1 of this administrative regulation. ~~[Fees charged are as set forth in 815 KAR 4:025.]~~

Section 3. Annual Inspection Fees. (1) The fee for the annual inspection of passenger elevators and escalators from which certificates of operation are issued, shall be fifty-five (55) dollars per inspection.

(2) Any inspection, other than an inspection made pursuant to a permit or annual inspection, conducted at the request of the owner or user of a unit shall be fifty-five (55) dollars.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 12, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 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 February 18, 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: Public and commercial buildings in which an elevator is located.

(a) Direct and indirect costs or savings to those affected: No additional costs beyond the fees charged for inspection.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body. Department receives fees for annual inspection of passenger elevators.

(a) Direct and indirect costs or savings: Fees generate approximately \$240,000 in revenue from annual inspections plus \$40,000 received from new installations or alterations to support the number of employees making the required amount of inspections.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting requirements have remained the same.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Fee for service viewed as best mechanism with appropriate persons paying.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation governs annual inspections and 815 KAR 4:025 regulates new construction.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. There is tiering to the extent that the adopted code has different requirements for different types of education.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Housing, Buildings and Construction

Office of State Fire Marshal

(Proposed Amendment)

815 KAR 4:025. Permit~~s~~ and inspection] fees for new and altered elevators ~~(and escalators)~~.

RELATES TO: KRS 198B.050, 198B.400-540

STATUTORY AUTHORITY: KRS 198B.060, 198B.490, 198B.520

NECESSITY AND FUNCTION: KRS 198B.490 authorizes the Commissioner of the Department of Housing, Buildings and Construction to make inspections and prescribe the fees to be charged for the installation and alteration ~~[each inspection] of each [an] elevator as defined by KRS 198B.400(1). [This regulation establishes the fees to be charged in order to raise enough revenue to properly administer the inspection program and clarifies that new installations and alterations are required to be permitted and inspected.] This administrative regulation includes the substance of 815 KAR 4:021, which has been repealed [therefore no longer necessitating the old regulation]. This amendment is necessary to clarify the necessity to permit both freight and passenger elevators under the Kentucky Building Code and to set reasonable fees for inspection.~~

Section 1. Definitions. (1) "Alteration" means [:] any change to an elevator, equipment or devices; however, [either than] maintenance, repair or replacement of parts in kind shall not be included in this definition.

(2) "Elevator" as defined in KRS 198B.400(1).

Section 2. Permit~~s~~ and Fees for Inspection of Elevator Construction and Alteration. (1) Construction permits shall be obtained from the Department of Housing, Buildings and Construction for the installation or alteration of an elevator, except for those alterations made pursuant to the report of an inspector, ~~[of any elevator or other lifting device covered by KRS 198B.400 and 815 KAR 4:010] and~~

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inspection fees shall be [are] required.

(2) Fees for the inspections made incident to the permit shall be [pursuant to this section] are as follows:

- (a) Zero to five (5) horsepower, per unit - \$40 (forty);
- (b) Six (6) to ten (10) horsepower, per unit - \$60 (sixty);
- (c) Eleven (11) horsepower and over, per unit - \$60 (sixty), plus \$5 (five) for each horsepower over ten (10).

~~[(3) An alteration, as defined in Section 1 of this regulation, shall be anything as defined in Part XII of the American Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, as adopted by reference in 815 KAR 4:010.~~

~~Section 3. Annual Inspection Fee. (1) The fee for the general inspection of elevators and escalators conducted annually from which certificates of operation are issued shall be fifty five (55) dollars per inspection.~~

~~(2) Any inspection, other than the inspection made pursuant to a permit or annual inspection, conducted at the request of the owner or user of any unit shall be fifty five (55) dollars.]~~

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 12, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 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 February 18, 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: Elevator installation contractors and owners of buildings in which an elevator is located.

(a) Direct and indirect costs or savings to those affected: No additional costs beyond the fees charged for plan review and inspections.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: Department receives fees for initial installation inspection of all elevators, passenger or otherwise.

(a) Direct and indirect costs or savings: Fees generate approximately \$40,000 in revenue from new installation and alterations plus approximately \$240,000 from annual inspections to support the number of employees making the required inspections.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting requirements have remained the same as have the fees for many years.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Fee for service viewed as best mechanism with appropriate persons paying.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflicting statute.

(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. Higher horsepower elevators require a higher inspection fee because the complexity of the inspector is somewhat more.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (Proposed Amendment)

815 KAR 10:040. Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227

STATUTORY AUTHORITY: KRS 227.300

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable administrative regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. This administrative regulation shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety and shall be used, where applicable, as a supplement to the Kentucky Building Code. This administrative regulation is necessary to establish minimum fire safety standards especially for buildings not constructed in accordance with applicable building codes in existence at time of construction. These standards are enforceable, as provided in this administrative regulation, by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320. This administrative regulation includes the substance of 815 KAR 10:020, which is being repealed. This amendment is necessary to provide for the installation of compressed natural gas self-service stations under conditions limiting access to the pumps to knowledgeable persons (i.e., company fleets). [This amendment is necessary to create new definitions, comply with certain KRS Chapter 13A requirements and to clarify and update the fire safety standards in several categories (e.g., laboratories, testing of alarm and sprinkler systems, recordkeeping of fire drills in schools, flammable finishes, specifying precise NFPA editions). In addition, specific language for flammable liquid plant operations and LP gas installations have been added.]

Section 1. Definitions. (1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for another code requirement because the substitute meets the intent of the code.

(2) "Code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this code and the codes and standards adopted herein. (See "Fire code official")

(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.

(4) "Common path of travel" means that portion of exit access

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that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.

(5) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(6) "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of fire or explosion or other impending disaster that may be a threat to life or property.

(7) "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(8) "Fire alarm box, manual" means a manually operated alarm-initiating device that, when operated, closes or opens one (1) or more sets of contacts.

(9) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(10) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this administrative regulation and the codes and standards adopted herein. (See "Code official")

(11) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(12) "Fire detector, automatic" means an alarm-initiating device that automatically detects heat, smoke or other products of combustion.

(13) "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wildland).

(14) "Fire prevention code" means the BOCA National Fire Prevention Code, 1990 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction and otherwise known as the Kentucky Standards of Safety.

(15) "Fire protection" means the provision of construction safeguards and exit facilities and the installation of fire alarm, fire-detecting and fire-extinguishing service equipment to reduce the fire risk and conflagration hazard.

(16) "Fire protective signaling system, central station" means a central office, connected to remote alarm and supervisory signaling devices, where personnel shall be in attendance at all times to monitor the system activity and investigate signals. The central-station personnel shall take immediate and appropriate action upon receipt of an alarm signal.

(17) "Fire protective signaling system, local" means a local system that sounds an alarm at the protected premises as the result of the manual operation of a fire alarm box or the operation of fire protection equipment or systems such as water flowing in a sprinkler system, the discharge of CO² or Halon, or the detection of smoke or heat.

(18) "Fire protective signaling system, proprietary" means an installation of protective signaling systems that shall serve contiguous and noncontiguous properties under one (1) ownership from a central supervising station located at the protected property, where trained, competent personnel shall be in constant attendance.

(19) "Fire protective signaling system, remote station" means an installation using supervised circuits to transmit alarm, supervisory and trouble signals from one (1) or more protected premises to a remote location at which appropriate action shall be taken.

(20) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to

control/suppress fire either by means of manual or automatic activation.

(21) "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(22) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(23) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.

(24) "Kentucky fire incident report" means a form for the reporting of fires which shall be obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(25) "LED" means level of exit discharge.

(26) "NFIPA" means the National Fire Protection Association.

(27) "Occupancy classification" means the various use groups as classified in the Kentucky Building Code and set forth in Section F-202.0 of this code.

(28) "Place of assembly" means buildings or portions thereof used for gathering together fifty (50) or more persons for purposes set forth in F-202.0, Use Group A, of this code.

(29) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use or any combination of any commodity or material regulated by this code.

(30) "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(31) "Smoke barrier" means a continuous membrane, either vertical or horizontal, such as a wall, floor, approved door, or ceiling assembly, that is designed and erected with construction materials to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. These barriers shall have protected openings.

(32) "Smoke detector, multiple station" means single-station smoke detectors that are capable of being interconnected in a way that the actuation of one (1) causes all integral or separate audible alarms to operate.

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

(34) "Smoking" means a lighting, igniting, holding or possession of any lighted cigar, cigarette or pipe.

(35) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

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

(37) "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in a manner as to endanger the safety of any person or property.

(38) "Use group" means the classification of a building or structure based on the purpose for which it is intended to be used.

(39) "Voice/alarm signaling system" means a system that

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provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals that pertain to a fire emergency.

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1990, 8th Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this administrative regulation, with specific changes to the BOCA Code set forth in Sections 3 through 25 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) Amend subsection F-100.1 to read as follows: "F-100.1 Title: These administrative regulations as set forth herein shall be known as the Kentucky Standards of Safety (Fire Prevention Code) and are herein referred to as same or as "this code"."

(2) Create a new subsection to read as follows: "F-100.5 Intent of Code: It is the express intent of this code to provide a reasonable degree of safety for human life. Therefore, where the purpose of any provision of this code can be fulfilled by other means, the specific requirements of this code may be modified by the fire code official to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical. Nothing in this code is intended to invalidate any lawfully adopted local government ordinance."

(3) Create a new subsection, "F-100.6 Continuation of Use" to read as follows:

(a) "F-100.6.1 The use and occupancy of any building which was constructed after the implementation of the Kentucky Building Code and for which there has been issued a lawful certificate of use or occupancy by the building code official may be continued without change so long as it is maintained and used as originally permitted and approved."

(b) Create a new subsection, F-100.6.1.1 to read as follows: "F-100.6.1.1 A condition or installation which was not constructed in accordance with applicable provisions of the edition of the Kentucky Building Code which was in effect when it was constructed, shall be considered an unlawful use or occupancy subject to F-100.6.2 and other applicable provisions of this code."

(c) "F-100.6.2 The use and occupancy of a building, other than a building covered by F-100.6.1, existing on the date of adoption of this code may be continued without change except as may be specifically covered by this code and deemed necessary by written decision of the fire code official for the life safety of the occupants and the public under Article 1 and 4 of this code."

(4) Create a new subsection, "F-100.7 Change in Use" to read as follows:

(a) "F-100.7.1 It shall be unlawful to make any change in the use of any structure or portion thereof with the potential to create a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without the written approval of the building official if required by the Kentucky Building Code."

(b) "F-100.7.2 Any proposed new use not subject to the Kentucky Building Code shall comply with the provisions of this code relating to the new use, as required by the fire code official."

(5) Create subsection F-100.8 to read as follows: "F-100.8 Certificate of Use and Occupancy. If the fire code official finds an existing building or facility to be in substantial compliance with the intent of this code and there are no violations of any order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use and occupancy of the building or facility and that use may continue without change as allowed by

F-100.6.1. Upon request, the building code official shall cooperate with the fire code official, pursuant to Section 106 of the Kentucky Building Code, in assessing existing buildings for relative fire safety."

(6) Amend subsection F-101.2 to read as follows: "F-101.2 Existing buildings: Buildings built under, and in full compliance with, the codes in force at the time of construction or alteration and that have been properly maintained and used as originally permitted, shall be exempt from the requirements of this code pertaining to any of the following matters:

1. Fire protection of structural elements.

2. Exits required, except as provided for existing buildings under this code.

3. Isolation of hazardous operations and mixed uses; provided, however, that the fire code official shall require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where they are necessary to provide safety to life and property. In lieu of requiring the installation of safety devices or systems or if necessary to secure safety in addition thereto, the fire code official shall prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property."

(7) Amend subsection F-101.3 to read as follows: "F-101.3 Application of building code: The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code and any alterations, additions or changes in buildings required by the provisions of this code which are within the scope of the Kentucky Building Code shall be made in accordance with the standards set forth therein."

(8) Delete subsections F-101.4 and F-101.4.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(9) Amend subsection F-101.6 to read as follows: "F-101.6 Compliance Alternatives:

(a) "F-101.6.1 If this code requires a particular system, condition, arrangement, material, equipment, or any other particular provision, the fire code official may grant alternatives if he finds that the alternative(s) are consistent with the intent of this code to provide adequate protection for life safety. The decision shall be written and shall provide a reasonable time to comply with the terms of the alternatives."

(b) "F-101.6.2 An application for an alternative may be filed with the fire code official by the owner or occupant and shall be accompanied by evidence, letters, statutes, results of tests or other supporting information as may be required to justify the request. The fire code official shall keep a record of action on applications and a signed copy of the fire code official's decision shall be provided for the applicant. Acceptance of an alternative by the fire code official shall signify compliance with this code under the provision for which an alternative is offered. Failure of the property owner or occupant to comply with the alternatives granted shall void the alternative."

(10) Create subsection "F-101.7 Exempted Facilities" to read as follows:

(a) "F-101.7.1 State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources or the Department of Corrections shall not be to comply with the provisions of the fire prevention code if they are inspected and approved by the Office of the State Fire Marshal in accordance with federally mandated codes or the edition of NFPA Pamphlet #101 (The Life Safety Code) under which the facility was initially approved. This code shall not make changes in the standards previously applicable to these facilities."

(b) "F-101.7.2 This code shall not apply to single family dwellings."

(11) Amend F-104.1 to read as follows: "F-104.1 Enforcement officer: It shall be the duty and responsibility of the State Fire

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Marshal, his designee, or local fire code official acting pursuant to lawful ordinance adopting this code to enforce the provisions of the fire prevention code as herein set forth. The designated enforcement officer of this code is herein referred to as the fire code official."

(12) Amend subsection F-104.5 by changing the reference of Section F-112.0 to Section F-108.0.

(13) Create a new subsection to read as follows: "F-104.9 Interpretations: Formal interpretations of the provisions of this code shall be issued by the State Fire Marshal upon written request, and a record of these interpretations shall be maintained by the State Fire Marshal and regularly communicated to persons who purchased the Fire Prevention Code book and others who are registered with the State Fire Marshal to be on the mailing list. These interpretations shall be used by all fire code officials to provide consistency in the understanding and enforcement of this Code. Upon adoption of these Standards of Safety by any unit of local government, pursuant to KRS 227.320, all interpretations of the Standards of Safety promulgated by the commissioner shall be interpreted likewise by the State Fire Marshal and the interpretations shall be used by all local fire code officials in the understanding and enforcement of this Code."

(14) Delete subsections F-105.6; F-105.7 and F-105.8 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(15) Amend subsection F-106.2 to read as follows: "F-106.2 Permits required: Local permits, if adopted by city or county ordinance, shall be obtained from the local fire code official according to the local adopting legislation. Inspection or permit fees, if any, shall be stipulated in the local adopting legislation. Permits shall be kept in the premises designated therein and shall be subject to inspection by the fire code official."

(16) Create subsection F-106.8 to read as follows: "F-106.8 The State Fire Marshal shall not become involved in the local permit process, and if local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute, administrative regulations and this code and inspected accordingly."

(17) Amend Section "F-108.0 Means of Appeal" to read as follows:

(a) "F-108.1 Local Appeals: A party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "F-108.1.1 State Fire Marshal appeals: Appeals from decisions of the State Fire Marshal or by his delegated authority, pursuant to KRS 227.230, shall be made in accordance with the provisions of KRS Chapter 227."

(18) Amend subsection F-109.3 to read as follows: "F-109.3 Unsafe buildings. Buildings and structures that are or shall become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. The fire code official or authorized fire chief shall order the unsafe conditions to be remedied in accordance with this code or removed."

(19) Amend subsection F-111.2 to read as follows: "F-111.2 Failure to correct violations: If the notice of violation is not complied with within the time specified by the fire code official, the fire code official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto."

(20) Create a new subsection, F-111.5, to read as follows: "F-

111.5 Compliance with a later edition of a standard required by this code shall be deemed equivalent and may be used by the owner in lieu of the edition specified in Appendix A."

(21) Delete subsections F-112.0 through F-112.7 from Article 1 of the 1990 edition of the BOCA National Fire Prevention Code in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table F-202 below.

TABLE F-202

1. Use Group A	assembly (See Section F-202.2)
2. Use Group B	business (See Section F-202.3)
3. Use Group E	educational (See Section F-202.4)
4. Use Group F	factory and industrial (See Section F-202.5)
5. Use Group H	high hazard (See Section F-202.6)
6. Use Group I	institutional (See Section F-202.7)
7. Use Group M	mercantile (See Section F-202.8)
8. Use Group R	residential (See Section F-202.9)
9. Use Group S	storage (See Section F-202.10)
10. Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "F-202.2.1 General. All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "F-202.2.2 Use Group A-1, theaters: This use group shall include theaters and other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code listed in Appendix A."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) "F-202.2.4 Use Group A-3 structures: This use group shall include buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums, stadiums, amusement park structures and fair or carnival structures. These structures shall comply with the provisions

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of the Kentucky Building Code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: Buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "F-202.5.1 General. Buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "F-202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "F-202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "F-202.6.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "F-202.6.2 Exceptions: The following shall not be classified as Use Group H but shall be classified in the usage group which they most nearly resemble:

1. A building or portion of a building containing less than the exempt amount of those materials shown in Table F-202.6 when maintained in accordance with this code.

2. Buildings containing rooms conforming to the requirements of Article 6 of the Kentucky Building Code listed in Appendix A.

3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m³) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m³/m²) of room area.

4. Rooms used for preparation or storage of food products for retail sale on the premises.

5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m³/m²) of room area.

6. Liquor stores and distributors without bulk storage.

7. The storage or use of materials for agricultural purposes for use on the premises.

8. Closed systems housing flammable or combustible liquids or gases used for the operations of machinery or equipment.

9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, if this use is separated from all other areas of the

building by one (1) hour fire-resistance rated construction.

10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).

11. Refrigeration systems.

12. Tire retail stores without bulk storage.

13. Any other building or portion thereof which is exempt from this classification by the Kentucky Building Code listed in Appendix A."

(c) The following table shall apply to this section:

"F-TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS,
LIQUIDS AND CHEMICALS

Material	Maximum quantities*
1. Flammable Liquids	
Class 1-A	30 gal. ^b
Class 1-B	60 gal. ^b
Class 1-C	90 gal. ^b
2. Combustible liquids ^c	
Class II	120 gal. ^b
Class III-A	250 gal. ^b
3. Combination flammable liquids ^a	120 gal. ^b
4. Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70°F.
5. Liquefied flammable gases	60 gal.
6. Combustible fibers-loose	100 cu. ft.
7. Combustible fibers-baled	1,000 cu. ft.
8. Flammable solids	500 lbs.
9. Unstable material	No exemptions
10. Corrosive liquids	55 gal.
11. Oxidizing material-gases	6,000 cu. ft.
12. Oxidizing material-liquids	50 gal.
13. Oxidizing material-solids	500 lbs.
14. Organic peroxides	10 lbs.
15. Nitromethane (unstable materials)	No exemptions
16. Ammonium nitrate	1,000 lbs.
17. Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18. Highly toxic material and poisonous gas	No exemptions
19. Smokeless powder	20 lbs. ^d
20. Black sporting powder	5 lbs. ^d

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.

Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.

Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in Appendix A shall be permitted.

Note d. Maximum quantities in the amount specified by NFPA 495 shall be permitted when stored in accordance with NFPA 495 listed in Appendix A.

Note e. 1 gallon = 0.00379 m³, 1 cubic foot = 0.028 m³, 1 pound = 0.454 kg."

(d) "F-202.6.3 Multiple hazards. Buildings in this category shall be further classified H1 - H4 as set forth in the Kentucky Building Code

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and materials representing hazards that are classified in one or more of the Use Group H subuses shall conform to the code requirements for each of the use groups so classified."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 General. Licensed institutional facilities shall conform to Section F-101.2.1."

(b) "F-202.7.2 Jails. Jails shall conform to the requirements of the Corrections Cabinet. State prisons shall conform to the requirements of the Life Safety Code, NFPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to these purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the Kentucky Building Code listed in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group R in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures. This use group shall include hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include multiple-family dwellings (apartment buildings) having more than two (2) dwelling units, except as provided in Section F-202.9.4 and shall also include boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.3.1 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.4 Use Group R-3 structures: This use group shall include buildings arranged for the use of one (1) or two (2) family dwelling units adjacent to or located above one another if they are completely separated by fire-resistance rating, if required by the Kentucky Building Code, and each unit has independent means of egress."

(f) "F-202.9.5 Use Group R-4 structures: This use group shall include detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. These uses shall be

classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES. F-202.11.1 General: Buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the Kentucky Building Code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible container or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. These receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-303.1 to read as follows: "F-303.1 General: Any person using a torch or other flame or heat producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after each use of the torch, flame or heat producing device."

(3) Create subsection F-304.2 to read as follows: "F-304.2 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: If approved by the fire code official."

(4) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall conform to the requirements of this code and NFPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(5) Amend subsection F-306.1 as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in a quantity to constitute a fire hazard, unless the materials are flame retardant."

(6) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: A parade float utilizing special effects designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(7) Create a new subsection, F-306.4, to read as follows: "F-306.4 Decorations. Furnishings or decorations of an explosive or highly combustible character shall not be used."

(8) Amend Section F-307 as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(9) Delete subsection F-307.3.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(10) Amend Section F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits of residue and grease in the system whenever buildup of residue and grease is apparent."

(11) Delete subsection F-310.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(12) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

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(13) Create a new subsection, F-310.3, to read as follows: "F-310.3 An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(14) Create a new subsection, "F-310.4 Cleaning", to read as follows:

(a) "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

(b) "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

(c) "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

(d) "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(15) Amend subsection F-311.1 to read as follows: "F-311.1 General: All required fire-resistance rated doors or smoke barriers shall be maintained in good working order including the hardware necessary for its proper operation. The use of door stops, wedges and other unapproved hold-open devices shall be prohibited. All self-closing and automatic-closing devices shall be of an approved type. Fire doors or smoke barriers may be maintained in an open position if an approved automatic-closing device actuated by automatic smoke detectors are also to be installed."

(16) Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions exist to make smoking a fire hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section F-701.6."

(17) Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, noncombustible ash trays or match receivers shall be provided on each table and at other convenient locations. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(18) Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus: All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that buildings and water supplies on the premises are at all times accessible to fire apparatus. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the locally authorized fire department of the jurisdiction. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by local ordinance on recommendation of the local fire department. A person shall not park a motor vehicle on, or otherwise obstruct, a required fire lane and motor vehicles shall not be parked within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(19) Amend subsection F-313.2 to read as follows: "F-313.2 Vertical clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, if the reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(20) Amend subsection F-314.1 to read as follows: "F-314.1

Abatement of electrical hazards: If electrical hazards are identified, the conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in accordance with NFIPA 70 listed in Appendix A."

(21) Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(22) Delete subsection F-315.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(23) Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain fuels prohibited. Solid fuel or Class I flammable liquids shall not be used as fuel for an asphalt (tar) kettle."

(24) Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

(a) "F-315.6.1 Open flame. Open flame in an asphalt (tar) kettle while in transit shall be prohibited."

(b) "F-315.6.2 Latching devices. Kettle doors or lids shall be closed and secured while in transit."

(c) "F-315.6.3 Asphalt (tar) kettles on trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck shall be prohibited. Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFIPA 385 listed in Appendix A."

(25) Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: If required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for the activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display the film."

(26) Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: If required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty-five (25) pounds (11.35 kg) of cellulose nitrate (phroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(27) Create a new Section, "F-319.0 Reporting Fires and Hazardous Substances" and subsections F-319.1 through F-319.3.1 to read as follows:

(a) "F-319.1 Reporting emergency conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

1. "F-319.1.1 Unfriendly fires. If an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

2. "F-319.1.2 Hazardous materials. If state or local legislation has been adopted specifying reportable quantities of hazardous materials released, notification shall conform to the provisions of legislation."

(b) "F-319.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.

2. A fire or fire related fatality (including vehicles and single family dwellings).

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3. A fire or fire related injury serious enough to become a fatality.

4. A fire involving major structural damage in a regulated building, including:

a. Institutional, educational, state owned or state leased and high hazard occupancies.

b. Business, mercantile and industrial occupancies having a capacity over 100 persons.

c. Assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(c) "F-319.3 Fire Department Operations at Emergencies. The highest ranking fire department officer conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of these operations, including the investigation of the cause of the emergency or the situation which required fire department notification, the highest ranking officer may control or prohibit the approach to the scene of the emergency by any vehicle, vessel, thing or person."

(d) "F-319.3.1 Fire scene control. The operations of the fire department shall not be obstructed in connection with the extinguishment of any fire, or the actions relative to other emergencies, or lawful commands of the highest ranking officer in charge of the emergency, or orders of a police officer assisting the fire department shall not be disobeyed."

Section 6. Article 4. (1) Create a new subsection "F-400.4 Purpose and Intent" to read as follows:

(a) "F-400.4.1 Every building or structure shall be provided with exits of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford the occupants convenient facilities for escape."

(b) "F-400.4.2 In existing buildings, it is not always practical to strictly apply the provisions of this code. Physical limitations may require disproportionate effort or expense with little increase in life safety. In these cases, the fire code official shall be satisfied that reasonable safety shall be assured."

(c) "F-400.4.3 In an existing building, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life even though the circumstances are not literally in compliance with the code."

(d) "F-400.4.4 The requirements for existing buildings may be modified if their application clearly would be impractical in the judgment of the fire code official, but only where it is clearly evident that a reasonable degree of safety shall be provided."

(2) Create a new subsection F-400.5 to read as follows: "F-400.5 Alternatives and Modifications. Compliance with this section may be used by the fire code official in lieu of other specific provisions of the code to satisfy the intent of the code as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and other appropriate circumstances. Because all building systems interact with each other, any consideration of compliance alternatives shall take into account all existing and proposed conditions to determine their original or continued acceptability.

These alternatives are not all-inclusive and shall not preclude consideration and approval of other appropriate alternatives by the fire code official. Buildings with alternative fire protection features

accepted by the fire code official shall be considered as conforming with this code."

(a) "F-400.5.1 Inadequate number of exits:

1. Provide connecting fire-exit balconies, acceptable to the enforcement authority, between buildings; or

2. Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority; or

3. Provide an exterior fire escape(s), acceptable to the enforcement authority, if providing enclosed interior or enclosed exterior stairs is not practical; or

4. Install approved smoke detectors or fire suppression system."

(b) "F-400.5.2 Excessive travel distances to exits:

1. Install approved interconnected smoke detectors throughout the building; or

2. Install an approved complete automatic fire suppression system; or

3. Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority; or

4. Increase the fire resistance rating of corridor walls and doors acceptable to the enforcement authority; or

5. Provide additional approved means of escape."

(c) "F-400.5.3 Unenclosed or improperly enclosed exit stairs to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected smoke detectors."

(d) "F-400.5.4 Inadequate fire separation walls or smoke barriers to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected smoke detectors."

(e) "F-400.5.5 Acceptance of Alternatives. The acceptance of any alternative(s) shall be in writing and shall be deemed to satisfy the intent of this code as it relates to the provisions for which the alternative(s) is offered as listed below:

1. Any alternative(s) specifically listed in F-400.5.1 through F-400.5.4 and complied with as set forth therein;

2. Any other alternative which is accepted or allowed by the fire code official.

(3) Create a new subsection F-400.6 to read as follows: "F-400.6 Upgrading of Existing Buildings. If, upon inspection, the fire code official finds that enforcement of this code requires alterations to a building, he shall identify the sections of this code which require correction and specify the type of correction necessary in order to achieve compliance. This decision shall be in writing to the owner or occupant and shall include a reasonable time for completion of the corrections. Failure of the owner or occupant to make the corrections described by the fire code official within the time frame specified shall be considered a violation subject to further action pursuant to F-111.2. Any party aggrieved by a decision of the fire code official may appeal in accordance with F-108.

(4) Amend subsection F-401.1 to read as follows: "F-401.1 Number of Means of Egress: Except as accepted in writing by the fire code official pursuant to Section F-101.6 or F-400.5 or as permitted in any Exception No. 1 - 4 of this section, every floor area of all occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

500 or fewer persons - two (2) means of egress

501 - 1000 persons - three (3) means of egress

1001 or more persons - four (4) means of egress

Exception No. 1 - Living units in Use Group R-2 (apartment buildings, rooming houses and multiple single family dwelling units) Living Units. A living unit may have a single exit if:

a. That living unit has an exit door directly to the street or yard at

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ground level; or

b. That living unit has direct access to an outside stair serving a maximum of two (2) units both located on the same floor; or

c. That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein; or

d. Any individual living unit below the fourth story may have an outside window openable from the inside without the use of tools or special knowledge as the second exit.

Building Exits. A building of three (3) stories or less may have a single exit under the following conditions:

a. The stairway is completely enclosed by smoke barriers; and

b. Doors protecting all openings into the stairs are approved solid wood core or steel doors with self-closing devices; and

c. The stairway does not serve more than one-half (1/2) story below the level of exit discharge; and

d. All corridors serving as access to exits are smoke resistant; and

e. There is not more than approximately thirty-five (35) feet of travel distance from the entrance door of any living unit to an exit; and

f. Three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

Fire Tower Exits. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Travel shall be on the same floor level or, if the traversing of stairs is required, stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if the exit is enclosed and serves no other levels and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within seventy-five (75) feet.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of

egress shall be permitted from any story or section, if the exit can be reached within the distance allowed as common path of travel."

(5) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions ^a
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m².

(6) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(7) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

(a) F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

(b) F-401.3.2 Increased occupant load: The occupant load permitted in any building or portion thereof shall be permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on the modified number. If required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. If required by the fire code official, the diagram shall be posted.

(c) F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three

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(3) square feet (0.28 m²) of occupiable floor space.

(d) F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

(e) F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

(f) F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

**TABLE F-401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT**

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net
Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m²

(g) F-401.3.7 Assembly buildings: Buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. If there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

(h) F-401.3.8 Exit capacity. The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

(i) F-401.3.9 Minimum width: The width of each means of egress component shall be computed in accordance with Table 401.3.1 for the

required capacity of the component, but shall not be less than the minimum width as prescribed by this code for each component.

**TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT**

Use Group	Without fire suppression system (inches per person) ^a	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2
Use Group	With fire suppression system (inches per person) ^a	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(8) Amend subsection F-401.4 to read as follows: "F-401.4 Corridor enclosure. Corridors serving as an exit access shall be constructed of materials which provide an effective smoke barrier.

(9) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system.

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(10) Create a new subsection, F-401.6 Panic hardware, to read as follows: "F-401.6 Panic hardware: Doors equipped with latching devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with panic hardware in compliance with the Kentucky Building Code listed in Appendix A."

(11) Amend Section F-403 by deleting subsections F-403.1, F-403.2 and F-403.3 and replacing with the following new subsections:

(a) "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

(b) "F-403.1.1 Artificial lighting. Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at places and for periods of time as required to

maintain the illumination to the minimum foot-candle values herein specified."

(c) "F-403.1.2 Floor lighting. The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theaters, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during periods of the performances to values not less than one-fifth foot candle."

(d) "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, shall not leave any area in darkness."

(e) "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, if all applicable requirements of this section for illumination are also met."

(f) "F-403.4 Sources of Illumination. Illumination of means of egress shall be from a source of reasonably assured reliability, such as public utility electric service."

(g) F-403.4.1 Electricity. If electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the NFPA 70 listed in Appendix A.

(h) F-403.4.2 Battery powered. A battery operated electric light nor any type of portable lamp or lantern shall not be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-403.5.

(i) F-403.4.3 Other lighting sources. Luminescent, fluorescent, or reflective material shall not be permitted as a substitute for any of the required illumination herein specified."

(j) "F-403.5 Emergency lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: Places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes shall be exempt."

(k) "F-403.5.1 Continuity. If maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. If emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not be permitted."

(l) "F-403.5.2 Duration. Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

(m) "F-403.5.3 Approved batteries. Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in lights or units shall be approved for their intended use and shall comply with the NFPA 70, listed in Appendix A."

(n) "F-403.5.4 Power failure. An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

(o) "F-403.5.5 Automation of system. An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(12) Amend subsection F-404.4 to read as follows: "F-404.4 Single- and multiple-station smoke detectors: A minimum of one (1) approved single-station or multiple-station smoke detector shall be installed in each guestroom, suite or sleeping area in buildings of Use Group R-1 and in dwelling units in the immediate vicinity of the

bedrooms in buildings of Use Groups R-2 and R-3. In buildings of Use Group R-3, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed in the upper level shall suffice for the adjacent lower level if the lower level is less than one (1) full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed on both levels. Detectors shall be installed in accordance with NFPA 74 listed in Appendix A; except that the use of smoke detectors installed in existing occupancies prior to the effective date of this Code which are installed and maintained in operable condition according to manufacturer's instructions, may be continued without change."

(13) Amend Section F-404.5 to read as follows: "F-404.5 Manual alarms. Fire Protective Signaling Systems (manual alarms) shall be required in all buildings of Use Group E; buildings of Use Group B if three (3) or more stories in height; buildings of Use Group R-1; and buildings of Use Group R-2 if four (4) or more stories in height."

Exceptions: 1. Buildings of Use Group B less than seven (7) stories in height equipped with a complete approved automatic sprinkler system.

2. Buildings of Use Group R-1 if each guest room has exterior exit access and the building is not greater than three (3) stories in height."

(14) Create a new Section "F-407.0 Emergency Generators" to read as follows:

(a) "F-407.1 Conduct or Witness Test. The fire code official may conduct or witness a test on the complete system upon installation."

(b) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFPA 70 listed in Appendix A."

(c) "F-407.3 Battery Systems Maintenance. If batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(d) "F-407.4 Written Record. A written record shall be kept on tests and maintenance."

(e) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(15) Create a new Section "F-408.0 Storage Room Separations" to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in quantities deemed hazardous by the fire code official in Use Groups A, B, E, R-1 and R-2 in excess of fifty (50) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating, be protected by an approved automatic fire suppression system or comply with alternatives accepted by the fire code official pursuant to Section F-400.5."

(16) Create a new Section "F-409.0 Marking of Means of Egress" to read as follows:

(a) "F-409.1 Where required. Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs.

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Marking of Signs. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Location and design of signs. Every required sign designating an exit or way of exit access shall be so located and of size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing

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signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Illumination shall be continuous as required under the provisions of Section F-403.0, Illumination and Signs, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(f) F-409.6 Information signs. A sign shall be provided at each floor landing in all interior stairways more than three (3) stories above grade designating the floor level above the floor of discharge. All

elevator lobby call stations on all floor levels in buildings more than seventy-five (75) feet (22860 mm) above the lowest level of fire department access shall be marked with approved signs reading as follows: Use Stairways in Case of Fire - Do Not Use Elevators."

(17) Create a new Section, "F-410.0 Special Occupancy Requirements" to read as follows:

(a) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in Chart F-410.1.1."

CHART F-410.1.1

Use group	Type of Construction Noncombustible				
	Type 1 Protected		Type 2		Unprotected 2C
	1A	1B	Protected 2A	2B	
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St. 30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction				
	Noncombustible/Combustible			Combustible	
	Type 3	Type 4 Heavy Timber		Type 5	
Unprotected	Protected	Unprotected		Protected	
	3A	3B	4	5A	5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-4 Assembly, churches	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'

Exceptions:

1. Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.

2. Places of assembly with an occupant load in excess of fifty (50) may be located on the second story if approved by the fire code official pursuant to F-400.5.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Kentucky Building Code listed in Appendix A."

(b) "F-410.2 Educational."

1. "F-410.2.1 Corridor Width. Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Closets. Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Smoke resistance of interior corridors. Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors.

Exceptions:

1. When all classrooms served by the corridor have an exterior exit.

2. When the building has an approved automatic sprinkler system

approved by the State Fire Marshal.

3. When corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Windowless rooms. Approved emergency lighting shall be installed in windowless classrooms."

(c) "F-410.3 Hotels and Dormitories." "F-410.3.1 Separation of corridors. Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel door and be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring-loaded hinges are acceptable."

(d) "F-410.4 Apartments."

1. "F-410.4.1 Protection of corridors. Doors between living units and interior exit access corridors shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exceptions:

1. When the building has an approved sprinkler system in the corridor.

2. When there are approved interconnected smoke detectors in each corridor on every level. Detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 Doors. All doors, rated or not, between living units

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and corridors shall be self-closing. Self-closing devices used for this purpose shall be approved by the fire code official. Spring loaded hinges are acceptable. Exception: If accepted by the fire code official pursuant to Section F-101.6 or F-400.5."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Required means of egress. Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Kentucky Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(e) "F-410.6 Mercantile."

1. "F-410.6.1 A dwelling unit shall not have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 Dwelling unit above mercantile prohibited. A multiple dwelling occupancy shall not be located above a mercantile occupancy.

Exceptions:

1. If the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

2. If approved by the fire code official."

3. "F-410.6.3 Door swing. Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(f) "F-410.7 Business." "F-410.7.1 Limitation of dwelling unit over business use. A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction.

Exception: If approved by the fire code official."

(g) "F-410.8 Mixed Uses." "F-410.8.1 Dissimilar use groups. If a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the Kentucky Building Code listed in Appendix A."

(h) Create a new subsection to read as follows: "F-410-9 Protection from spills in laboratory or research facilities: Laboratories and research facilities storing quantities of chemicals for use in laboratory research activities shall be provided with adequate spill control equipment. This shall include absorbent materials and neutralizing agents where applicable. This material shall be maintained in a suitable storage container in the storage area. Personnel protective equipment consistent with the hazard shall be available."

(i) Create a new subsection to read as follows: "F-410.10 Fuel gas for laboratory or research facilities: Fuel gas supply piping shall be in compliance with the applicable provisions of NFIPA 45 and NFIPA 54 listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance test: Fire protection systems shall be tested in accordance with the requirements of this code and with the Kentucky Building Code listed in Appendix A. The tests shall be the responsibility of the owner or an authorized representative, and the fire code official shall be given an opportunity to be present. All tests required by this code and the standards listed in this code shall be conducted at the expense of the owner or the owner's representative."

(2) Create a new subsection to read as follows: "F-500.7 Inspections and Test Requirements: Inspections and tests required by Sections F-503.0, F-504.0, F-505.0, F-506.0, F-507.0, F-508.0, F-509.0, F-511.0, F-512.0, F-514.0 and F-515.0 shall be conducted

only by persons authorized or certified by the State Fire Marshal's Office and shall be recorded on forms approved by the State Fire Marshal's Office. Copies of the forms shall be sent to the State Fire Marshal upon request."

(3) Amend subsection F-508.3 to read as follows: "F-508.3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(4) Amend subsection F-509.3 to read as follows: "F-509.3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(5) Amend subsection F-511.1 to read as follows: "F-511.1 Periodic testing and inspection: All fire protective signaling systems shall be maintained in accordance with NFIPA 71 and 72 listed in Appendix A and shall be periodically inspected and tested in accordance with Sections F-511.2 through F-511.3.

Exception: Manual fire alarm systems under F-519.1."

(6) Amend subsection F-511.2 to read as follows: "F-511.2 System test: Complete and satisfactory tests shall be made of all devices in accordance with the following:

1. At twelve (12) month intervals: all transmitters and circuit interfaces.

2. At twelve (12) month intervals: functional and operation testing of the voice/alarm signaling system and water-flow-actuated devices. For sprinkler water-flow alarm tests, an actual water flow, through the use of a test connection, shall be the method employed for testing the reliability of the sprinkler alarm unit as a whole.

3. At twelve (12) month intervals: gate valve supervisory switches, manual fire alarm boxes, combination night guard and fire alarm boxes, tank water level devices, building and tank water-temperature supervisory devices, and other sprinkler system supervisory devices.

4. At twelve (12) month intervals: remote annunciators, audible and visible alarm-indicating appliances, two (2) way telephones for the fire service, primary and secondary power supplies and all control panel functions.

5. Inspection and test of automatic fire detection devices shall be in accordance with Section 512.0."

(7) Amend subsection F-512.1 and create an exception to read as follows: "F-512.1 Periodic testing and inspection: All automatic fire detection systems shall be maintained in accordance with NFIPA 72E listed in Appendix A and periodically inspected and tested in accordance with Sections F-512.2 through F-512.10.

(8) Amend subsection F-512.4 to read as follows: "F-512.4 Restorable heat detectors: For restorable heat detectors, one (1) or more detectors on each signal-initiating circuit shall be tested at twelve (12) month intervals and different detectors shall be selected for each test. Within five (5) years, each detector shall have been tested. Exception: Pneumatic line-type heat detectors."

(9) Amend subsection F-512.5 to read as follows: "F-512.5 Pneumatic line-type heat detectors: All pneumatic line-type heat detectors shall be tested for leaks and proper operation at twelve (12) month intervals."

(10) Amend subsection F-512.6 to read as follows: "F-512.6 Nonrestorable line-type fixed-temperature heat detectors: Nonrestorable line-type fixed-temperature heat detectors shall be tested for alarm function at twelve (12) month intervals. The loop resistance shall be measured, recorded and compared with the loop resistance previously recorded. Any change in loop resistance shall be investigated."

(11) Amend subsection F-512.8, Smoke detector sensitivity, to read as follows: "F-512.8.1 Sensitivity testing: Smoke detection systems installed after December 31, 1992, shall be checked for sensitivity within one (1) year of installation and at two (2) year intervals thereafter. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be

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tested using either:

1. A calibrated test method; or
2. The manufacturer's calibrated sensitivity test instrument; or
3. Listed control equipment arranged for that purpose; or
4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or

5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(12) Create subsection F-512.8.2 to read as follows: "F-512.8.2 Installations prior to January 1, 1993: Smoke detection systems installed prior to January 1, 1993, in occupancies, with the exception of use Group E having no overnight sleeping quarters, shall be tested for sensitivity as follows: One (1) smoke detector or ten (10) percent, whichever is greater, on each defined zone shall be sensitivity tested at two (2) year intervals. For each detector the fails, two (2) additional detectors on the same zone shall be tested until a zero failure rate is attained on that zone. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be tested using either:

1. A calibrated test method; or
2. The manufacturer's calibrated sensitivity test instrument; or
3. Listed control equipment arranged for that purpose; or
4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or

5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(13) Create subsection F-512.8.3 to read as follows: "F-512.8.3 Nonstable systems: There is a large population of installed smoke detectors that were manufactured in compliance with previous product standards that did not require a means for testing sensitivity within an acceptable listed range. It is the intent of this code that these detectors shall not be tested against current product standards."

(14) Amend subsection F-512.10 to read as follows: "F-512.10 Flame detectors, fire-gas detectors and other fire detectors: All flame detectors, fire-gas detectors and other fire detectors shall be tested in a manner acceptable to the manufacturer at twelve (12) month intervals."

(15) Amend the Exception in F-513.2 to read as follows: "Exception: The written log of tests as specified in Section F-504.1 shall not be required in buildings of Use Group R-2 or R-3."

(16) Create a new "Section F-518.0 Commercial Kitchen Exhaust" to read as follows: "F-518.1 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(17) Create a new "Section F-519.0 Manual Fire Alarm Systems" to read as follows: "F-519.1 Manual fire alarm systems inspection: Manual fire alarm systems within all buildings shall be checked monthly by the owner or owner's representatives. The use of the system for fire drill purposes shall be accepted as a test of only those parts of the system actually used in the drill procedure. Accurate logs shall be maintained on the premises indicating box number, location, data and type of device tested. Any defect, modification or repair shall be logged, and the log shall be available to the fire department."

Section 8. Article 6 is hereby adopted in its entirety and a new subsection created to read as follows: "F-602.4 Closing: All fire doors shall comply with Section F-311.0."

Section 9. Article 7. (1) Create a new subsection, "F-700.2 Fire Exit Drills" to read as follows:

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by this code, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership under the supervision of the owner-operator or administrator."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the fire code official."

(2) Amend subsection F-701.1 to read as follows: "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in effecting orderly exit of assemblages."

(3) Amend subsection F-701.2 to read as follows: "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the fire code official."

(4) Amend subsection F-701.3 to read as follows: "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300 or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools if used for nonpublic events."

(5) Amend subsection F-701.4 to read as follows: "F-701.4 Open Flame Devices. Open flame devices shall not be used in any assembly occupancy."

Exceptions:

1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

2. Open flame devices may be used on stages when a necessary part of theatrical performances, if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

3. Gas lights may be permitted if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

4. Candles may be used on tables if securely supported on

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substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

5. As permitted in F-701.5."

(6) Create new subsection F-701.5 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fueled by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted if necessary precautions are taken and subject to the approval of the fire code official.

(7) Create a new subsection "F-701.6 Smoking" to read as follows:

(a) "F-701.6.1 For purposes of abatement of fire, smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

(b) "F-701.6.2 In rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

(c) "F-701.6.3 A person shall not smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

(d) "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall conform to the requirements of F-312.6."

(8) Create a new subsection "F-701.7 Furnishings, Decorations, and Stage Scenery" to read as follows:

(a) "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

(b) "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

(c) "F-701.7.3 There shall be no exposed foamed plastics."

(9) Create a new subsection "F-701.8 Coat Racks" to read as follows: "F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(10) Create a new subsection F-701.9 to read as follows: "F-701.9 Unvented fuel fired heaters shall not be used in assembly occupancies."

(11) Amend Section F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

(a) "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

(b) "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it

as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

(c) "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or other members of the staff. If the teachers are to search, it shall be done after they have led their classes to the preceding lines."

(d) "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to obtain clothing after the alarm is sounded, even if in home rooms, due to the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

(e) "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. These points shall be sufficiently far away from the building and from each other to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

(f) "F-702.1.6 If it is necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic during the period of the drill."

(g) "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(12) Amend subsection F-702.3 to read as follows: "F-702.3 Records: A record of fire exit drills shall be kept on the premises and persons in charge of these occupancies shall, upon request, file written reports with the code official, giving the following information:

1. Time of drill.
2. Date of drill.
3. Weather conditions when occupants were evacuated.
4. Number of occupants evacuated.
5. Total time for evacuation.
6. Other information relevant to the drill.

(13) Create a new subsection "F-702.5 Fire Alarm Signals" to read as follows:

(a) "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

(b) "F-702.5.2 If the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or other facilities as are available."

(c) "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. These signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

(d) "F-702.5.4 Inspection."

(e) "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

(f) "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(14) Delete Section F-703, F-704 and F-705 in their entirety.

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(15) Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel and Motel Emergency Organization."

1. "F-707.1.1 Hotel and Motel Employee Duties. Employees of hotels and motels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Monthly drills. Drills of the emergency organization shall be held at monthly intervals, covering the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

3. "F-707.1.3 Emergency Duties in Hotels, Motels and Dormitories. The owner or other person in control of the premises shall take immediate action to control any fire on the premises. Upon discovery of fire, some or all of these duties will become immediately imperative, the number and sequence depending upon the exact situation encountered:

Alarms

Notify office.

Notify public fire department.

Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.

Assist occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons.

Search rooms to be sure all occupants have escaped.

Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.

Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.

Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.

Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.

Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.

Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(b) "F-707.2 Dormitory Drills." "F-707.2.1 Fire exit drills shall be conducted quarterly in accordance with F-701.0."

(c) "F-707.3 Emergency instructions for Residents or Guests of Hotels, Motels or Dormitories."

1. "F-707.3.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.3.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(d) "F-707.4 Emergency Instructions for Residents of Apartment Buildings." "F-707.4.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(e) "F-707.5 Furnishings and Decorations." "F-707.5.1 New

draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-306.0."

(f) "F-707.6 Unvented fuel-fired heaters shall not be used in residential occupancies. Exception: Listed and approved unvented fuel-fired heaters in one (1) and two (2) family dwellings."

(g) "F-707.7 Gas Grills on balconies of multifamily dwellings."

"F-707.7.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily dwelling of three (3) or more living units located one (1) above the other. (See NFIPA 58 listed in Appendix A)"

(16) Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 Training. In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Fire extinguishers. Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(17) Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures and shall hold practice drills periodically where practicable."

(b) "F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

Section 10. Article 8 is adopted in its entirety.

Section 11. Article 9. Amend subsection F-901.1 to read as follows: "F-901.1 General: The layout, arrangement and construction of buildings and structures in which spraying or dipping operations are done shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. If provisions of this article do not specifically cover conditions and operations, buildings and structures and their service equipment shall be maintained in proper operating condition as required by this code and NFIPA 33 and 34 listed in Appendix A."

Section 12. Article 10 is adopted in its entirety.

Section 13. Article 11. Amend subsection F-1101.1 to read as follows: "F-1101.1 General: The layout, arrangement and construction of buildings and structures in which the process of ripening or coloring of crops is conducted shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. Buildings and structures and their service equipment shall be maintained in a safe and sound condition as required by that code."

Section 14. Articles 12 through 15 are adopted in their entirety.

Section 15. Article 16. (1) Delete subsections F-1600.1 through F-1602.2 from Article 16 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(2) Create a new subsection, F-1603.3, to read as follows: "F-1603.3 Storage and handling: The storage and handling of all flammable and combustible liquids at gas or oil wells and related production facilities shall comply with the requirements of NFIPA 30 referenced in Appendix A."

Section 16. Article 17. (1) Delete subsection F-1700.2 in its

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entirety.

(2) Amend subsection F-1703.2, Doors, to read as follows: "F-1703.2 Doors: All doors in buildings of use Group A and E or portions of buildings used for assembly shall comply with the requirements set forth in subsection F-401.6 and subsection F-602.0. Panic release devices shall not be required in Use Groups A-3 and A-4 if the principal entrance/exit doors are free-swinging and swing in the direction of exit travel."

Section 17. Article 18 is adopted in its entirety and a new subsection shall be created to read as follows: "F-1800.3 Operation and maintenance: All devices and systems required by Section 603 of the Kentucky Building Code listed in Appendix A shall be maintained in an operable condition."

Section 19. Articles 19 through 26 are adopted in their entirety.

Section 20. Article 27. (1) Amend Subsection F-2700.1 to read: ""F-2700.1 Scope: See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 21. Article 28. (1) Amend Subsection F-2800.3 and create paragraphs F-2800.3.1 through F-2800.3.2 to read as follows:

(a) "F-2800.3 Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(b) "F-2800.3.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

5. Permits shall not be required for the storage and handling of crude oil on oil and gas leases."

6. Nothing in this Article shall require compliance by those oil and gas facilities regulated pursuant to KRS Chapter 353.

(c) "F-2800.3.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of the Kentucky Building Code."

(2) Create a new subsection, F-2800.4.2 Inspection, to read as follows: "F-2800.4.2 Inspection: Prior to covering or concealing any work, the State Fire Marshal's Office shall be notified when the installation is ready for inspection. The State Fire Marshal may require covered or concealed work to be exposed, if necessary, to determine code compliance."

(3) Create a new subsection, F-2804.3.3, to read as follows: "F-2804.3.3 Intercommunication System: In self-service stations, an effective two (2) way intercommunication system between the control stand and each pump island shall be installed."

(4) Create a new subsection, F-2805.5, to read as follows: "F-2805.5 Prohibited Uses: Flammable and combustible liquid storage tanks designed for underground use shall not be installed above-

ground unless the manufacturer also specifies that the tank is suitable for aboveground use."

(5) Create a new subsection, F-2806.5.1, to read as follows: "F-2806.5.1 Electrical Conduit: Electrical conduit shall be separated from underground storage tanks or piping systems by at least six (6) inches (152 mm)."

(6) Create a new subsection, F-2806.9.1, to read as follows: "F-2806.9.1 New Underground Installations: During backfill and paving operations, the contractor shall monitor new underground installations for leaks by means of pressure, water or vacuum testing as appropriate to the type of system."

(7) Create subsection F-2806.10.2.1 to read as follows: "F-2806.10.2.1 Overfill method: The underground storage tank shall be filled to its maximum capacity in conducting precision tests for the following:

1. Alterations or the breaking of any connections located at the top of the tank; and

2. To determine the location of a suspected leak as determined by the code official."

(8) Create a new subsection, F-2806.10.3, to read as follows: "F-2806.10.3 Failed Tests: An underground storage tank or piping system which fails a test required by F-2806.10.2.1 shall be promptly reported to the State Fire Marshal's Office."

(9) Create a new subsection, F-2806.10.4, to read as follows: "F-2806.10.4 Pump Leak Protection: In new construction, new systems and upgrades, a positive shut-off valve shall be installed between the piping system and the leak detector on the discharge side of the pump."

Section 22. Article 29 is adopted in its entirety with the following subsection amended to read as follows: "F-2901.2 Identification: All containers shall be labeled or placarded in accordance with DOT 49 CFR listed in Appendix A."

Section 23. Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.3 to read as follows:

(a) "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(b) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(c) "F-3000.2.2 The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

(d) "F-3000.2.3 Any permanent (Stationary) tank installation utilizing storage containers of over 2,000 gallons (7.6 m³) individual water capacity or with aggregate water capacity exceeding 4,000 gallons (15.1 m³)."

(2) Amend subsection F-3001.1 to read as follows: "F-3001.1 Above ground: All above-ground tank container systems shall be located with respect to the nearest important building, group of buildings or line of adjoining property as specified in Table F-3001.1."

(3) Amend subsection F-3005.2 by adding the following exception: "Exception: Compressed natural gas (CNG) self-service units may be installed and used at public service stations under the following conditions:

1. A permit for the installation shall be obtained from the State Fire Marshal; and

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2. The installation and operation shall comply with NFIPA 52 listed in Appendix A; and

3. The installation shall be designed and operated to be accessible only to fleet vehicles and by persons who have been trained in dispensing the product; i.e., equipment requires use of a personal identification number or a CNG card to operate."

(4) Amend subsection F-3005.0 by creating the following new subsection to read as follows: "F-3005.4 Compressed natural gas (CNG) operations: A person shall not operate a CNG dispenser at a public service station unless the person has been trained in the operation of the dispenser under the criteria described in NFIPA 52 listed in Appendix A."

Section 24. Articles 31 through 34 are adopted in their entirety unchanged.

Section 25. Appendix A is adopted in its entirety, with the following amendments:

(1) Add the following NFIPA Pamphlet Editions:

- "13R-91 Sprinkler Systems in Residential Occupancies Up to Four (4) Stories in Height
- 45-91 Fire Protection for Laboratories Using Chemicals
- 72-90 Installation, Maintenance and use of Protective Signaling Systems
- 231-90 General Storage
- 231C-86 Rack Storage of Materials
- 231D-89 Storage of Rubber Tires
- 231F-87 Storage of Rolled Paper
- 1123-90 Outdoor Display of Fireworks
- 1124-88 Manufacturer, Transportation and Storage of Fireworks"

(2) Add the following reference: "The Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky Administrative Regulations."

(3) Amend the Edition dates for the following ASTM references: "D86-90"; "D93-90"; "D323-90"; and "E84-91".

(4) Amend the Edition date for the following API reference: "12B-90".

(5) Amend the Edition date for the following ASME reference: "A17.1-90".

(6) Amend the Edition date for the following STI reference: "STIstiP3-90".

(7) Amend the Edition date for the following UL reference: "443-90".

(8) Amend the Edition date to "1990" for the following NFIPA references: "10; 12B; 14; 15; 17; 17A; 20; 30; 30A; 32; 46; 50; 59A; 72E; 80; 91; 99; 303; 385; 407; 495 and 704."

(9) Amend the Edition date to "1991" for the following NFIPA reference: "13; 16; 88B; and 801".

(10) Amend the Edition date to "1992" for the following NFIPA reference: "#58[- and -#70]".

(11) Amend the Edition date to "1993" for the following NFIPA reference: "#70".

(12) [(11)] Delete the following NFIPA references: "72A; 72B; 72C; 72D; and 72F".

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 8, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 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 February 18, 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: Existing commercial, public buildings and multifamily dwellings.

(a) Direct and indirect costs or savings to those affected: Amendment may result in costs of making fire safety alterations to buildings only if a hazard exists in the facility.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Regular inspection reports as have been carried on for many years.

(2) Effects on the promulgating administrative body: Receiving inspection reports, scheduling hearings, etc.; procedures do not change with amendment. Code books will be amended and sent to purchasers.

(a) Direct and indirect costs or savings: Book amendment and mailing to purchasers which is provided by office staff.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change in paperwork requirements through the citations for violations, computer adjustments, etc.

(3) Assessment of anticipated effect on state and local revenues: None anticipated beyond permits, if they so choose.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with fire codes referenced in appendix. More efficient because it was designed to interact with requirements of the Kentucky Building Code.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.

(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the Kentucky Standards of Safety and the KBC are harmonized to avoid conflict. It allows the building official to refer to the standards if necessary and lets fire officials enforce code where it was never approved when built. SFM enforcement powers include the ability to help enforce all laws relating to fire safety.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered by allowing alternatives to meet the intent of the code and to allow different treatment of existing buildings based upon whether or not they have had prior approval or met other building codes.

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FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the Standards of Safety, pursuant to KRS 227.320.

(3) State the aspect or service of local government to which this administrative regulation relates. Fire safety inspections, report and enforcement.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Merely provides appropriate standards for use statewide by each local government.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (Proposed Amendment)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135 [224.814, 224.820]

STATUTORY AUTHORITY: KRS 224.60-135 [224.820(5)], 227.300

NECESSITY AND FUNCTION: KRS 224.60-135 [224.820(5)] requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. This amendment is necessary to clarify the type of insurance and coverage included and create a probationary certificate when the applicant does not comply with the level of experience required. [This amendment is necessary to delete OSHA requirements for medical training, etc., is inappropriate at the certification stage, and to reduce the experience requirements and to provide appropriate review of competency.]

Section 1. Definitions. [~~Definitions in this section shall apply to this regulation.~~] (1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this administrative regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance or

cathodic protection applied to existing installations.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) A permit for the installation of any UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made by a certified contractor and unless the installation, removal, repair or closure of the system complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Final inspection of an installation after components of the piping have been connected, field coated and cathodically protected;

(d) Final pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in which components of the piping are connected;

(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the closing in which components of the UPST system are disconnected or capped.

- (4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:
- (a) The cleaning and purging of the UPST system;
 - (b) The actual excavation and removal of the UPST system or any of its components;
 - (c) All testing associated with the cleaning and purging processes;
 - (d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:

- (1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and outlined in Section 11 [49] of this administrative regulation, accompanied by a nonrefundable fee of \$150; and
- (2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and
- (3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this administrative regulation; and
- (4) The individual shall complete the examination requirements of Section 7 of this administrative regulation; and
- (5) Upon application or prior to the issuance of the certificate, the individual shall provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance in the minimum amount of \$25,000 per occurrence [for taking corrective action and for compensating third parties for bodily injury and property damage]; and
- (6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, the person's participation in the installation of, performance of repairs on site to, closure of, or removal of a minimum of six (6) underground storage tanks. Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks [systems]; or

(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements by one-third (1/3).

(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6(1) of this

administrative regulation, the applicant may receive a probationary certificate under the following conditions:

- (1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination to satisfactorily pass; and
- (2) An applicant has completed three (3) tank installations within one (1) year of the issuance of the certificate; and
- (3) All UPST activities comply with applicable codes and statutes; and
- (4) An applicant shall not remove, close, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and
- (5) An applicant shall pay a \$100 add-on inspection fee for each site for which a tank is removed, closed or installed.

Section 8. [7.] Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant may request permission to take the examination orally, upon good cause shown.

(5) An [To satisfactorily pass the written examination, the] applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(6) An [Any] applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) With [When] the application [is filed], the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. [8.] Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this administrative regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occur:

(a) The applicant failed to provide the information required by the application form prescribed by the State Fire Marshal and outlined in Section 11 [49] of this administrative regulation; or

(b) The applicant failed to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant failed to comply with the experience and

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education requirements of this administrative regulation; or

(d) The applicant did not successfully pass the examination required by this administrative regulation; or

(e) The applicant made a misrepresentation or submitted false statements with the application.

Section 10. [9-] Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required code relating to installation, repair, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

Section 11. [40-] Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: Full Remover

Application Fee: \$150

Examination: \$25 Yes No

(Remit by check or money

order only. Payable to:

Kentucky State Treasurer)

FOR OFFICE USE ONLY

Rec'd (Date) _____

Money Rec'd _____

Application # _____

Certification # _____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name of Qualifying Person _____

2. Permanent Residence _____

Street/Box Office Number

City _____ County _____ State _____ Zip _____

3. Telephone: _____

Residence _____ Business _____

4. Birthdate _____ 5. Social Security # _____

6. Place of Birth _____

City _____ County _____ State _____

7. Company Name _____

Company Address _____

Street/Box Office Number

City _____ County _____ State _____ Zip _____

8. Certificate to be issued in: _____

Company Name _____ Individual Name _____

9. Send Mail to: _____

Company Address/#7

Permanent Residence/#2

10. List any schools or training seminars concerning tank installations which you have attended:

Title _____ Presented By _____ Date(s) _____

11. With whom did you most recently apprentice as a tank installer?

Business name: _____

Address: _____

Street _____ City _____ State _____ Zip _____

Person who supervised you: _____

Period of apprenticeship: _____

From _____ To _____

Month Yr _____ Month Yr _____

12A. Number of years experience as a tank installer: _____

12B. Number of years experience as a tank remover: _____

13. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____
Dual containment (double wall tank)	_____	_____
TOTALS	_____	_____

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14B. Approximate number of tank removals you have:

Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name	Address	Telephone #
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

16. Attach proof of general liability insurance. (Certificate of Insurance from a company authorized to do business in Kentucky)

17. Attach proof of pollution liability insurance. (Policy certificate from a licensed Kentucky agent or Kentucky surplus lines broker; surety bond from a Kentucky licensed company or an irrevocable letter of credit from an FDIC Kentucky Domicile Bank)

18. Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.) for qualifying individual.

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant for Company

Date

NOTARIZED BY:

State of _____

County of _____

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Subscribed and sworn to before me this _____ day of _____, 19____

Notary Public

My Commission expires _____

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
DENNIS L. DECKER, State Fire Marshal

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 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 February 18, 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 companies engaged in the business of installing, repairing, closing or removing underground petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected: Fees are as follows:

1. First year: Application for certification fee - \$150; exam fee - \$25; probationary certification fee - \$100.

2. Continuing costs or savings: Reexamination fee - \$25; certification renewal fee - \$50 annually.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Insurance required, possible training. It may decrease competition because some small contractors may elect to get out of business.

(b) Reporting and paperwork requirements: Application and verification of experience and insurance supplied upon application and renewal.

(2) Effects on the promulgating administrative body: Oversight of the program, administration of exam and general filing and administration.

(a) Direct and indirect costs or savings: The costs for administering the program are intended to be offset by the fees charged.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenue and any increases on state revenues are offset by costs of program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Experience is necessary in addition to testing to show knowledge of standards and technical expertise.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is

no known conflict or duplication of these regulations although some overlapping of laws in KRS Chapter 224 where owners and operators of service stations must be insured.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Different levels of regulation and oversight are provided for based upon different levels of experience of the installers.

CABINET FOR HUMAN RESOURCES Department of Health Services (Proposed Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: ~~[The Cabinet for Human Resources is empowered by]~~ KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the regulation and licensing of the possession or use of ~~[any]~~ sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative ~~[The purpose of this]~~ regulation ~~[is to]~~ provides general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material.

Section 1. Applicability. This administrative ~~[The provisions of this]~~ regulation ~~[applies]~~ ~~[apply]~~ to the licensing of ~~[all]~~ persons who possess, use, or transfer radioactive material within Kentucky.

Section 2. License Requirement. Except for persons ~~exempted by~~ ~~[exempt as provided in]~~ 902 KAR 100:015 and 902 KAR 100:045, ~~a~~ ~~[no]~~ person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100 ~~[pursuant to these regulations]~~. Authority to transfer possession or control by the manufacturer, processor, or producer of ~~[any]~~ equipment, devices ~~or~~ ~~[;]~~ commodity, or other products ~~[of any equipment, device, commodity, or other product]~~ containing radioactive material whose subsequent possession, use, transfer and disposal by other persons are exempted from regulatory requirements ~~[source, by product, or special nuclear material, intended for use by the general public]~~ may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555.

Section 3. Types of Licenses. (1) Licenses for radioactive material shall be ~~[are]~~ of two (2) types: general and specific.

(2) Except as ~~[otherwise]~~ specified in 902 KAR 100:050, ~~[these regulations]~~ general licenses are effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee ~~[particular persons]~~. The general license is subject to ~~[all]~~ other applicable requirements of 902 KAR Chapter 100 ~~[these regulations]~~ and ~~[any]~~ limitations of 902 KAR 100:050 ~~[the general license]~~.

(3) All specific licenses require the submission of an application to the cabinet and the issuance of a licensing document by the cabinet. The ~~[Such]~~ licenses shall be subject to ~~[all]~~ applicable requirements of 902 KAR Chapter 100 ~~[these regulations]~~ and to ~~[such]~~ limitations ~~[as may be]~~ specified in the licensing document.

Section 4. Filing of Application for Specific Licenses. (1) Applications for specific licenses shall be filed with ~~[on a form prescribed by]~~ the cabinet.

(2)(a) The cabinet may at a ~~[any]~~ time after the filing of the

original application, and before the expiration of the license, require further statements in order to enable the cabinet to determine whether the application should be granted or denied or whether a license should be modified or revoked. Prelicensing visits may be made to the applicant's facility for the purpose of obtaining [additional] information in addition to that furnished in the original application.

(b) If the applicant or licensee fails to respond to a request for additional information within thirty (30) days of the date of the receipt of the request, or within another [any] other specified time, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or [may] deny the application.

(3) The [Each] application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if [provided that] the application specifies the [specified-such] additional activities and complies with the provisions of 902 KAR Chapter 100 [applicable regulations of the cabinet] relating to specific [such] licenses.

(5) [In his application,] The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if [provided-such] references are clear and specific.

[(6) Applications and documents submitted to the cabinet may be made available for public inspection except that the cabinet may withhold, upon request, any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned.]

Section 5. General Requirements for the Issuance of Specific Licenses. (1) A license application shall be approved if the cabinet determines that:

(a) [(1)] The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested in accordance with 902 KAR Chapter 100 and [these regulations] in [such] a manner as to minimize danger to public health and safety or property;

(b) [(2)] The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) [(3)] The issuance of the license will not be inimical to the health and safety of the public; and

(d) [(4)] The applicant satisfies [any] applicable special requirements in 902 KAR Chapter 100 [these regulations].

(2) For [(6) In the case of] an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity will be conducted, [on the basis of information filed and evaluations made, has concluded, after] weigh[ing] the environmental, economic, technical, and other benefits against environmental costs and consider[ing] available alternatives;

(b) A license application may be approved if the cabinet determines after consideration of the factors described in paragraph (a) of this subsection, that the action called for is the issuance of the proposed license, with [any] appropriate conditions to protect environmental values;

(c) Commencement of construction prior to the determination [such conclusion] shall be grounds for denial of a license to receive and possess radioactive material in the [such] plant or facility. As used in this subsection, the term "commencement of construction" means [any] clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction

monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3) [(6)](a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 USC 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11 USC 101(2)) of the licensee.

(b) This notification shall [must] indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(4) [(7)] Information provided to the cabinet by an applicant for a license or by a licensee or information required by 902 KAR Chapter 100 [these regulations], orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 6. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 [the Act] and 902 KAR Chapter 100 [the regulations of the cabinet], the cabinet may [will] issue a specific license authorizing the proposed activity in a [such] form and containing [such] conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in a [any] license when issued [at the time of issuance], or thereafter by appropriate rule, 902 KAR Chapter 100 [regulation], or order, or as otherwise specified in [by 902 KAR 100:170 and] Section 14 of this administrative regulation, [such] additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 [these regulations] as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require [such] reports and the keeping of [such] records, and provide for [such] inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 7. Specific Terms and Conditions of Licenses. (1) A [Each] license issued pursuant to this administrative regulation shall be subject to [all] the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100 [the Act, now or hereafter in effect, and to all rules, regulations], and orders of the cabinet.

(2) Neither the license nor a [any] right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852 [the Act].

(3) Each person licensed by the cabinet under 902 KAR Chapter 100 [pursuant to these regulations] shall confine his use and possession of the radioactive material(s) licensed to the locations and purposes authorized in the license.

Section 8. Expiration and Termination of Licenses. (1) Except as specified [provided] in subsection (9) of this section and in Section 9(2) of this administrative regulation, a [each] specific license shall expire at the end of the day, in the month and year stated in the license [therein].

(2) A [Each] licensee shall notify the cabinet promptly, in writing, and request termination of the license if [when] the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license shall include the reports and information specified in subsection (3)(d) and (e) of this section and a plan for completion of decommissioning if required by subsection (4) of this section or by license condition.

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~~[The termination of activities shall be in accordance with 902 KAR 100-020, Section 21 and this section.]~~

(3) If a licensee does not submit an application for license renewal under Section 9(2) of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

- (a) Terminate use of radioactive material;
- (b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;
- (c) Properly dispose of radioactive material; and
- (d) Submit form RPS-10 "Disposition of Radioactive Material" to the cabinet; and
- (e) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the result of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta and gamma radiation at one (1) centimeter and gamma radiation at one (1) meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

2. Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(4) In addition to the information required under paragraphs (d) and (e) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the cabinet and could increase potential health and safety impacts to workers or to the public as in the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(b) Workers may be entering areas not normally occupied in which surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(c) Procedures would result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures would result in significantly greater releases of radioactive material to the environment than those associated with operation.

(5) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(6) The proposed decommissioning plan, if required by subsection (4) of this section or by license condition, must include:

(a) Description of planned decommissioning activities;

(b) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(c) A description of the planned final radiation survey; and

(d) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(7) The proposed decommissioning plan may be approved by the cabinet if the information in the plan demonstrates that the decommissioning will be completed as soon as is reasonable and the health and safety of workers and the public will be adequately protected.

(8) Upon approval of the decommissioning plan by the cabinet, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in subsection (3)(e) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(9) If the information submitted under subsection (3)(e) or (8) of

this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the cabinet will inform the licensee of the appropriate further actions required for termination of license.

(10) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual radioactive material present as contamination until the cabinet notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license is terminated.

(11) Specific licenses will be terminated by written notice to the licensee when the cabinet determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

~~[(4) Each license will be valid until the cabinet notifies the licensee in writing that the license is terminated.]~~

Section 9. Renewal of License. (1) Applications for renewal of specific licenses shall be filed in accordance with 902 KAR Chapter 100 [these regulations].

(2) ~~If [in any case in which]~~ a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, ~~the [such]~~ existing license shall not expire until the application has been finally determined by the cabinet.

Section 10. Amendment of Licenses. (1) Applications for amendment of a license at the request of the licensee shall be filed in accordance with 902 KAR Chapter 100 [these regulations] and shall specify the respects in which the licensee desires his license to be amended and the grounds for ~~the [such]~~ amendment.

(2) Every five (5) years ~~or [and]~~ at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 11. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100 [applicable criteria set forth in these regulations].

Section 12. Inalienability of Licenses. A ~~[No]~~ license issued or granted under 902 KAR Chapter 100 ~~or [these regulations and no]~~ right to possess or utilize radioactive material granted by a ~~[any]~~ license issued under 902 KAR Chapter 100 ~~[pursuant to these regulations]~~ shall ~~not~~ be transferred, assigned, or otherwise ~~[in any manner]~~ disposed of, ~~[either voluntarily or involuntarily, directly or indirectly,]~~ through transfer of control of a ~~[any]~~ license to any person unless the cabinet ~~[shall]~~, after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 ~~[provisions of these regulations]~~ and gives its consent in writing.

Section 13. Transfer of Material. (1) ~~A [No]~~ licensee shall ~~not~~ transfer radioactive material except as authorized by ~~[pursuant to]~~ this administrative regulation.

(2) Except as stated ~~[otherwise provided]~~ in the license and subject to the provisions of subsections (3) and (4) of this section, a ~~[any]~~ licensee may transfer radioactive material subject to the

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acceptance of the transferee:

(a) To a [any] person exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the [such] exemption;

(b) To [any] persons authorized to receive radioactive [such] material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an [any] Agreement State; or

(c) To [any] persons otherwise authorized to receive radioactive [such] material by the federal government or an [any] agency thereof, the cabinet, or an [any] Agreement State; or

(d) ~~(e)~~ As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission or with an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this administrative regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; if [provided, that] the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100 ~~[be in accordance with the provisions of these regulations]~~.

Section 14. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a [any] license shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or ~~[the Act, or by reason, including violation(s), of rules, regulations, and]~~ orders issued by the cabinet.

(2) A [Any] license may be revoked, suspended, or modified, in whole or in part, for:

(a) A [any] material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;

(b) [any statement of fact required under provisions of the Act, or]

Because of conditions revealed by [such] application or statement of fact; or

(c) A [any] report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application; or

(d) For violation of, or failure to observe ~~[any of,]~~ the terms and conditions of KRS 211.842 to 211.852 ~~[the Act]~~, or of the license, or of [any] rules, 902 KAR Chapter 100 [regulations], or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, a [no] license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings ~~[therefor]~~, facts or conduct which may warrant this [such] action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing in a manner set forth in 902 KAR 100:170.

Section 15. Retention of Records. (1) A [Each] person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 ~~[pursuant to these regulations]~~ shall keep records showing the receipt, transfer, and disposal of [such] radioactive material.

(2)(a) Records of receipt of radioactive material which are required by ~~[must be maintained pursuant to]~~ subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the [such] transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) [All] Other records required by 902 KAR Chapter 100 ~~[these regulations]~~ or by a license condition shall be maintained for the period specified ~~[by the applicable regulation or license condition]~~. If ~~[in the event]~~ the retention period is not specified by 902 KAR Chapter 100 ~~[regulation]~~ or license condition, the [such] records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 ~~[pursuant to these regulations]~~ may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100 ~~[cabinet regulations]~~.

Section 16. Financial Assurance and Recordkeeping for Decommissioning. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material, except source material, with a half-life greater than 120 days and in quantities exceeding 10E5 times the applicable quantities set forth in 902 KAR 100:030, Section 2 shall submit a decommissioning funding plan as described in subsection (5) of this section. The decommissioning funding plan shall also be submitted if a combination of isotopes is involved if R divided by 10E5 is greater than one (1) (i.e., unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 902 KAR 100:030, Section 2.

(b) An applicant for a specific license authorizing the possession and use of more than 100 millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subsection (5) of this section.

(c) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries but less than or equal to 100 millicuries in a readily dispersible form shall either:

1. Submit a decommissioning funding plan as described in

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subsection (5) of this section; or

2. Submit a certification that financial assurance for decommissioning has been provided in the amount of \$150,000 using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section is to be submitted to the cabinet.

(2) An applicant for a specific license authorizing possession and use of radioactive material, except source material and sealed special nuclear material sources, with a half-life greater than 120 days and in quantities specified in subsection (4) of this section shall either:

(a) Submit a decommissioning funding plan as described in subsection (5) of this section; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section is to be submitted to the cabinet.

(3)(a) Each holder of a specific license issued on or after January 1, 1995, which is of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(b) Each holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(a) or (b) of this section shall submit, on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to \$750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in an application for amending the license in its entirety.

(c) Each holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(c) or (2) of this section shall submit, on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

(a) Greater than $10E4$ but less than or equal to $10E5$ times the applicable quantities of 902 KAR 100:030, Section 2, in unsealed form. For a combination of isotopes, if R , as defined in subsection (1) of this section divided by $10E4$ is greater than one (1) but R divided by $10E5$ is less than or equal to one (1) - \$750,000.

(b) Greater than $10E3$ but less than or equal to $10E4$ times the applicable quantities of 902 KAR 100:030, Section 2, in unsealed form. For a combination of isotopes, if R , as defined in subsection (1) of this section, divided by $10E3$ is greater than one (1) but R divided by $10E4$ is less than or equal to one (1) - \$150,000.

(c) Greater than $10E10$ times the applicable quantities of 902 KAR 100:030, Section 2, in sealed sources or plated foils other than sealed special nuclear material sources. For a combination of isotopes, if R , as defined in subsection (1) of this section, divided by $10E10$ is greater than one (1) - \$75,000.

(5) Each decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (6) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(6) Financial assurance for decommissioning shall be provided by

one (1) or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method. If the licensee defaults, these methods guarantee that decommissioning costs shall be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 17 of this administrative regulation. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

1. The surety method or insurance shall be open-ended or, if written for a specified term, such as five (5) years, shall be renewed automatically unless ninety (90) days or more prior to the renewal date, the issuer notifies the cabinet, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

2. The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

3. The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in paragraph (b) of this subsection.

(d) In the case of a state, or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount based on the table in subsection (4) of this section, and indicating that funds for decommissioning shall be obtained when necessary.

(7) A person licensed under this administrative regulation shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the cabinet. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the cabinet considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials like concrete. These records shall include known information on identifica-

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tion of involved nuclides, quantities, forms and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 17. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds shall be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(1) Financial test. To pass the financial test, the parent company shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The parent company shall have:

1. Two (2) of the following three (3) ratios: A ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); and a ratio of current assets to current liabilities greater than one and one-half (1.5); and

2. Net working capital and tangible net worth each at least six (6) times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(b) The parent company shall have:

1. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure the licensee shall inform the cabinet within ninety (90) days of matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d) 1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraphs (a) and (b) of this subsection, the licensee shall send notice to the cabinet of intent to establish alternate financial assurance as specified in this administrative regulation. The notice shall be

sent by certified mail within ninety (90) days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of that fiscal year.

(2) Parent company guarantee. The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the cabinet. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both licensee and the cabinet as evidenced by the return receipts.

(b) If the licensee fails to provide alternate financial assurance as specified in this administrative regulation within ninety (90) days after receipt by the licensee and the cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

RICE C. LEACH, M.D., Commissioner

LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by February 18, 1993: Masten Childers, II, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe

(1) Type and number of entities affected: Approximately 30 licensees may be affected by this administrative regulation.

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

1. First year: These affected licensees would be required to obtain financial provisions to cover decommissioning/decontamination when licenses are terminated based on the schedule provided in the administrative regulation.

2. Continuing costs or savings: Continuing costs would be based on method of financial assurance chosen by entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None other than those in this administrative regulation.

(b) Reporting and paperwork requirements: Paperwork increase would only result if decommissioning/decontamination resulted from license termination.

(2) Effects on the promulgating administrative body: No initial direct impact on administrative body.

(a) Direct and indirect costs or savings: Administrative body would not be responsible for decommissioning/decontamination of licensees' property or holding.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork increase would only result if decommissioning/decontamination resulted from license termination.

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(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: This regulation must be identical to that of the U.S. Nuclear Regulatory Commission and other states. No alternative is available.

(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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because different types of licensees are regulated based on their disposal of radioactive material.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.

2. State compliance standards. This revision provides provisions for financial assurances by licensees to decommission/decontaminate facilities upon license termination.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

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 from federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services (Proposed Amendment)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

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

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

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

(a) Physical, occupational and speech therapy.

(b) Laboratory procedures.

(c) X-ray.

(d) Oxygen and other related oxygen supplies.

(e) Respiratory therapy (excluding the routine administration of oxygen).

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

(13) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(14) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified ~~the~~ ^{such} prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

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(15) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a [skilled] nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this administrative regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky

Medicaid [Medical Assistance] Program Nursing Facility Reimbursement Manual, revised January 1, 1993 [July 1, 1992] which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid [Medical Assistance] Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in

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non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

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

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

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

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

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

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

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

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

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem.

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

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

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

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

4. The maximum payment amounts for the prospective uniform

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

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

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

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

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

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

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

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

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when

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an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

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

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

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

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

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

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

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

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

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

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

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

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

time of the sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent

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of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing [skilled] nursing facility participates in the program under this payment system.

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

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

(Effective 10-1-90)

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

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

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

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy

program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

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

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1993.

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

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the

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cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

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

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

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

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

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

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after January 1, 1993 ~~[July 1, 1992]~~.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: December 22, 1992

FILED WITH LRC: December 23, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 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: Masten Childers II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas A. Graham

(1) Type and number of entities affected: Those nursing facilities participating in the Medicaid Program that refinance long-term debt at lower interest rates.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None*

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *This amendment will result in a long-term savings for the cabinet and participating nursing facilities.

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, JANUARY 15, 1993

KENTUCKY AGRICULTURAL EXPERIMENT STATION

12 KAR 1:007 Exemptions.

RELATES TO: KRS 250.020 to 250.170

STATUTORY AUTHORITY: KRS 250.030, 250.040

NECESSITY AND FUNCTION: To make exemptions for situations that were not intended to be covered by the new law.

Section 1. (1) Seed. This exemption allows a farmer (producer) to sell seed to neighbors from his or her own premises without meeting licensing and reporting requirements if he or she does not advertise or deliver seed off his or her premises or ship by common carrier. The exemption does not apply to situations where the seed is sold through a separate business outlet owned by the producer.

(2) Tobacco seedlings. Individuals selling tobacco seedlings or finished plants are exempt from certification, licensing and reporting requirements if the number sold by the individual does not exceed 25,000 seedlings or finished plants. To fall within this exemption, seedlings or finished plants must be grown, sold and delivered by a producer on his or her own premises. The exemption is intended to enable farmers to sell small numbers of seedlings that may be left over after establishing their own fields. It is not intended to exempt sales of seedlings that were produced with the original intent of being sold. The exemption will not apply in the following instances:

(a) Seedlings or finished plants are advertised for sale, delivered by common carrier or sold in or by a business establishment. In such cases, all requirements of KRS 250.020 to 250.170 must be met.

(b) Seedlings are grown by one (1) person for another person who offers the seedlings for sale. One (1) person may produce seedlings for another as long as no sale of seedlings is involved, but the person having the seedlings grown may not claim the 25,000 plant exemption.

(c) More than 25,000 seedlings grown in facilities, structures, or sets of planting beds located on the same farm are sold by a person or a group of people.

(d) Tobacco seedlings are sold or offered for sale by persons who do not raise tobacco as a cash crop.

(3) Black soybeans (hay beans) may continue to be sold as "variety unknown" when the variety truly is not known.

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 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: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: (1) Kentucky farmers who raise their own tobacco seedlings; (2) Kentucky farmers who purchase tobacco seedlings for planting; (3) Kentucky seed companies or individuals who sell tobacco seedlings; (4) out-of-state growers or handlers of seedlings that are shipped to Kentucky for sale; (5) seed improvement associations in states in which tobacco seedlings are grown and then shipped to Kentucky to be sold; (6) the Kentucky Seed Improvement Association.

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

1. First year: (1) These people will benefit by being allowed to sell small numbers of uncertified tobacco seedlings which may be left over after planting. (2) Farmers who purchase exempted tobacco seedlings from neighboring farmers will lose the protection given to those who purchase certified seedlings. Savings to those who purchase certified seedlings will come from assurance that seedlings being purchased are of a known, desirable variety; that there will be a uniform and accurate labeling of tobacco seedlings throughout the state; and that there will be a mechanism in place to eliminate unacceptable seedlings from the marketplace. Costs of seedlings to the farmer who purchases seed will reflect certification and inspection costs, but will be offset by profits from high quality tobacco crops. (3) This group of people will be adversely affected by this proposed regulation which allows the sale of some uncertified seed. Farmers who sell exempted seedlings will be in direct competition with those who sell certified seedlings. The total impact is unknown. Costs of certified seedlings will reflect certification and inspection costs. Certification costs are estimated to be 2.1% of the retail value of finished plants and 3.7% for transfer plugs. These costs will be offset by profits from sales of seedlings of assured quality. (4) This group of people will be adversely affected by this proposed regulation which allows the sale of some uncertified seed. Farmers who sell exempted seedlings will be in direct competition with those who sell certified seedlings. Costs of certification which will vary from one state to another. In all cases, it is believed that certification costs in other states will equal or exceed certification costs in Kentucky. Money involved will go to the certifying agency of the state; (5) No response; (6) KSIA will be adversely affected by this proposed regulation which allows the sale of some uncertified seed. Farmers who sell exempted seedlings will be in direct competition with those who sell certified seedlings, and the variety and quality of their product will not be subject to the same mandatory quality control standards as certified seedlings. The new law gave KSIA the responsibility for tobacco seedling certification in the state and the task of developing and implementing the program. To carry this out, KSIA is developing a program that will ensure that Kentucky farmers receive high-quality seedlings of known variety.

2. Continuing costs or savings: No change from costs or savings in first year.

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: This proposed regulation will have no effect, but it is an essential part of the overall inspection program. Added cost of inspection of tobacco seedlings will be in the form of time of additional inspectors' time and added inspection expenses. The amount of time involved will be kept as low as is consistent with effective enforcement of the law. Fees received as a part of regulations associated with this one will be used to offset the additional cost of inspection.

2. Continuing costs or savings: No change from costs or savings incurred in first year.

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3. Additional factors increasing or decreasing costs: Added inspection costs are expected to be incurred to enable efficient enforcement of the new seedling law.

(b) Reporting and paperwork requirements: None are affected by this proposed regulation, but it is an essential part of the overall seed law enforcement program. Regulatory Services Division must keep accurate records of transactions. Permits will be issued to out-of-state persons who ship tobacco seedlings into Kentucky. All required steps can be handled by existing staff.

(3) Assessment of anticipated effect on state and local revenues: The effect of the tobacco seedling changes will be to maintain the importance of tobacco to the economy of the state. This new law came about because Kentucky farmers were experiencing serious problems with tobacco seedlings they were purchasing. Some were not receiving the variety or even the type they thought they had purchased. These problems were occurring because of the rapid change from growing conventional seed beds to producing or purchasing greenhouse float or container seedlings. The law was changed to enable the state to adapt to the change. Failure to adapt would have detrimental effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The seed law change that became effective July 14, 1992, cannot be enforced without a change in the regulations. The proposed changes were formulated after discussions with representatives of the Kentucky Seed Dealers Association, Kentucky Seed Improvement Association and Farm Bureau. The proposed changes in this and the associated regulations are believed to be the best way to enforce the revised law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering occurs by exempting farmers from the law when they sell small amounts of tobacco seedlings. Otherwise, the law applies equally to all people.

DEPARTMENT OF STATE Registry of Election Finance

32 KAR 2:090. Permanent committees, registration and fees.

RELATES TO: KRS 121.170(5)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.170(5) requires that a permanent committee pay an administrative fee of \$200 no later than the last day of the calendar quarter following the year in which it registers with the registry and each succeeding year thereafter until it terminates. It is necessary to promulgate this administrative regulation to establish a procedure to be followed by the Registry of Election Finance and permanent committee.

Section 1. Definitions. "Permanent committee" shall have the meaning prescribed by KRS 121.015(6), and shall include all permanent committees, whether instate, out-of-state, or federally registered out-of-state permanent committees.

Section 2. Administrative Fee, Schedule for Payment. (1) An instate or out-of-state permanent committee registered with the Registry of Election Finance as of December 31, 1992, shall pay the \$200 administrative fee required by KRS 121.170(5) no later than March 31, 1993, and shall pay the fee annually no later than March 31 of each succeeding year until the permanent committee terminates.

(2) A federally registered out-of-state permanent committee which had filed a copy of its Federal Election Commission Form 1 - Committee Registration Form with the registry as of December 31, 1992, shall pay the \$200 administrative fee no later than March 31, 1993. For each succeeding year, a federally registered out-of-state permanent committee shall pay the fee no later than the last day of the first calendar quarter following the year in which it files a copy of its Federal Election Commission Form 1 - Committee Registration Form with the Registry.

Section 3. Fee Payment. The registry shall advise each permanent committee as to the date on which its administrative fee is due. Payment shall be made by check payable to the Kentucky State Treasurer and shall be sent to the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: December 9, 1992

FILED WITH LRC: January 6, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 25, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all permanent committees, including instate, out-of-state, and out-of-state federally registered committees.

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

1. First year: Each permanent committee will be required to pay a \$200 annual registration fee as provided in KRS Chapter 121.

2. Continuing costs or savings: Each permanent committee will be required to pay a \$200 annual registration fee as provided in KRS Chapter 121.

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

(b) Reporting and paperwork requirements: Each permanent committee is required to file finance reports as required by KRS 121.180, but no additional paperwork will result from this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The registry will incur an additional cost in processing and mailing notices to permanent committees as well as processing the registration fees as they are received.

2. Continuing costs or savings: The registry will incur an additional cost in processing and mailing notices to permanent committees as well as processing the registration fees as they are received.

3. Additional factors increasing or decreasing costs: The costs incurred by the registry will be in direct proportion to the number of permanent committees registered or active in Kentucky.

(b) Reporting and paperwork requirements: Additional paperwork will be encountered by the registry staff in processing registration fees as they are received.

(3) Assessment of anticipated effect on state and local revenues:

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None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since the registration fee is specifically required by KRS Chapter 121.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Some clarification of KRS Chapter 121 would be desirable to state clearly whether the phrase "a permanent committee" is inclusive of all permanent committees, including out-of-state federally-registered permanent committees.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied as the statute regarding permanent committee registration fees applies in a uniform manner.

DEPARTMENT OF STATE Registry of Election Finance

32 KAR 2:100. Postelection and supplemental reports.

RELATES TO: KRS 121.180(4), (7)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.180(3)(b) requires candidates, campaign committees, political issues committees, and registered fundraisers to file a report on the 32nd day preceding an election. KRS 121.180(4) and (7) require that candidates, campaign committees, political issues committees, and registered fundraisers shall file postelection reports within thirty (30) days after the election, and supplemental reports until any balance of funds remaining or debts owed show no unexpended balance or unpaid deficit. It is necessary to promulgate this administrative regulation to clarify the manner in which these reports are to be compiled as the transition is made between reporting periods for the primary and regular elections.

Section 1. Definitions. (1) "Thirty (30) day postelection report" means the postelection report required by KRS 121.180(4).

(2) "Supplemental report" means the report required by KRS 121.180(7).

(3) "Thirty-two (32) day preelection report" means the report required by KRS 121.180(3)(b).

Section 2. Postelection Reports. (1) In making the thirty (30) day postelection report required by KRS 121.180(4) following a primary election, the candidate, campaign committee, political issues committee, or registered fundraiser shall reflect only those contributions received, expenditures made, and debts incurred as of 12 midnight local time on the date of the primary election.

(2) All contributions received, expenditures made, and debts incurred subsequent to 12 midnight local time on the date of the primary shall be attributed to the regular election and shall be reflected on the thirty-two (32) day preelection report filed prior to the regular election.

Section 3. Supplemental Reports. (1) In making the supplemental reports required by KRS 121.180(7), a candidate, campaign committee, political issues committee, or registered fundraiser shall reflect the remaining balance and debts owing for the primary election only. A successful primary candidate who files one (1) or more supplemental reports for the primary and has carried a remaining balance forward to his campaign account for the regular election, shall reflect on the supplemental report only debts outstanding from the primary election. The supplemental report shall be accompanied by form KREF 92-009 (Certificate of Debt Assumption). The balance carried

forward shall be reflected on the thirty-two (32) day preelection report for the regular election.

Section 4. Material Incorporated by Reference. Form KREF 92-009 (Certificate of Debt Assumption), revised 7/10/92, is hereby incorporated by reference and may be obtained free of charge from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. local time.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: December 9, 1992

FILED WITH LRC: January 6, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 25, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all candidates for public office in Kentucky who are required to file campaign finance reports with the Registry of Election Finance.

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

1. First year: There are no direct or indirect costs or savings resulting from this administrative regulation, as it deals with technical reporting requirements.

2. Continuing costs or savings: There are no direct or indirect costs or savings resulting from this administrative regulation, as it deals with technical reporting requirements.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Because this regulation relates only to the manner in which candidates compile reports, there are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This administrative regulation clarifies the manner in which candidates make the transition between reporting periods for the primary and regular elections, so there is really no additional paperwork or reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Staff time will be saved as a result of clarified reporting requirements. The transition between reporting requirements for the primary and regular elections has been a source of great confusion because overlaps in reporting has in some cases created the appearance of commingling of funds and a good deal of staff time has been devoted to discussions with candidates in an attempt to reconcile entries on reports.

2. Continuing costs or savings: Staff time will be saved as a result of clarified reporting requirements. The transition between reporting requirements for the primary and regular elections has been a source of great confusion because overlaps in reporting has in some cases created the appearance of commingling of funds and a good deal of staff time has been devoted to discussions with candidates in an attempt to reconcile entries on reports.

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3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation clarifies the manner in which candidates make the transition between reporting periods for the primary and regular elections, so there is really no additional paperwork or reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the provisions of this administrative regulation clarify the manner in which candidates are to report receipts and expenditures for the primary and general elections.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied because the reporting requirements apply uniformly to all candidates who are required to file campaign finance reports with the registry.

DEPARTMENT OF STATE Registry of Election Finance

32 KAR 2:110. Disclaimers.

RELATES TO: KRS 121.190(1)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.190(1) requires that all "newspaper or magazine advertising, posters, circulars, billboards, handbills, sample ballots, and paid-for television or radio announcements" relating to the candidacy of any person for public office include a disclaimer indicating by whom the cost of the material was paid. While the statute specifically enumerates certain materials which must have a disclaimer, there are many other methods of political advertisement utilized by candidates and committees which are not addressed. It is necessary to promulgate this administrative regulation to establish guidelines for disclaimer requirements for items not covered by statute.

Section 1. Definitions. "Disclaimer" means the identification of an advertising sponsor required by KRS 121.190(1).

Section 2. Exemptions. (1) Disclaimers shall not be required for calling cards smaller than three and one-half (3 1/2) inches by five (5) inches, pencils, pens, emery boards, fly swatters, matchbooks, bumper stickers, and articles of clothing such as hats, tee shirts, sweat-shirts, and jackets, or other items made of material on which a disclaimer would be illegible.

(2) Materials exceeding a single page which are distributed by mail shall be considered as being in substantial compliance with disclaimer requirements if at least one (1) page of the mailing includes a disclaimer.

(3) Envelopes stamped with a return address which includes the name of the candidate or campaign committee as an indication that the candidate is seeking election to public office shall not be required to include a disclaimer, provided that at least one (1) piece of the envelope's contents includes a disclaimer as provided in subsection (2) of this section.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: December 9, 1992

FILED WITH LRC: January 6, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administra-

tive regulation shall be held on February 25, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact person: Anita Taylor

(1) Type and number of entities affected: This administrative regulation affects all candidates for public office throughout the Commonwealth.

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

1. First year: No additional costs will result to those affected. Some direct savings may result since disclaimers will not be required on every single piece of printed material.

2. Continuing costs or savings: No additional costs will result to those affected. Some direct savings may result since disclaimers will not be required on every single piece of printed material.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The savings in printing costs will be directly proportional to the amount of material printed which does not require a disclaimer.

(b) Reporting and paperwork requirements: No additional reporting and paperwork will result from this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs will be incurred by Registry as a result of this administrative regulation. Some savings may result as it is anticipated that clarification of disclaimer requirements should decrease the number of complaints which must be processed by the Registry.

2. Continuing costs or savings: No additional costs will be incurred by the Registry as a result of this administrative regulation. Some savings may result as it is anticipated that clarification of disclaimer requirements should decrease the number of complaints which must be processed by the Registry.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will result from this administrative regulation.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The provisions of this administrative regulation are designated to place previous rulings of the Registry with regard to disclaimers. There has been a great deal of confusion among candidates relative to disclaimers and it was determined by the Registry that promulgation of this administrative regulation would assist candidates in complying with disclaimer requirements. Therefore, no alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied because disclaimer requirements apply uniformly to all candidates for public office in Kentucky.

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GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners

201 KAR 16:015. Fees.

RELATES TO: KRS 321.193, 321.195, 321.201, 321.211, 321.221

STATUTORY AUTHORITY: KRS 321.193, 321.195, 321.201, 321.211, 321.221, 321.235, 321.240

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 321.193, 321.195, 321.201, 321.211, and 321.221 and sets forth in detail all fees charged by the board.

Section 1. Application Fees. The following fees shall be paid in connection with all types of veterinary applications:

(1) The application fee for a licensed veterinarian shall be fifty (50) dollars.

(2) The application fee for a veterinary technician or a veterinary technologist shall be twenty-five (25) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the examinations required by the board:

(1) The fee for the National Board Examination for Veterinary Medicine shall be \$150.

(2) The fee for the Clinical Competency Test in Veterinary Medicine shall be eighty-five (85) dollars.

(3) The fee for the state examination shall be \$100.

(4) The fee for the veterinary technician or technologist examination shall be seventy-five (75) dollars.

Section 3. Renewal Fees and Penalties. No person holding a license shall practice in this state after November 30 of the year in which their license is to be renewed unless such license has been renewed as provided by law and payment of the prescribed fee has been made. All licenses not renewed by November 30 following the expiration date shall be deemed expired and no person holding an expired license shall engage in the practice of veterinary medicine. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure as a veterinarian shall be fifty (50) dollars.

(2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be seventy-five (75) dollars.

(3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be \$100.

(4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.

(5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.

(6) The renewal fee for reinstatement of licensure as a veterinary technician or technologist after November 30 shall be fifty (50) dollars.

JOHN MCCLURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,500 individuals credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: \$25 increase in renewal fees. Examinations would create a break-even situation.

1. First year: The board does not anticipate any further increases in the near future.

2. Continuing costs or savings: All fees will continue at this level for the foreseeable future.

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

(b) Reporting and paperwork requirements: The application fee should accompany the application. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets the application fee for potential licensees.

(a) Direct and indirect costs or savings: The change in exam fees will enable them to break even on the administration of an exam. Other fees have not been increased since 1976.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All funds received are deposited to a trust and agency revolving account. This is their sole source of funding.

(3) Assessment of anticipated effect on state and local revenues: These fees should generate a sufficient level of funding for agency use.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners

201 KAR 16:070. Hearing procedures.

RELATES TO: KRS 321.351, 321.360

STATUTORY AUTHORITY: KRS 321.235, 321.240, 321.351, 321.360

NECESSITY AND FUNCTION: KRS 321.360 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 321 or the regulations promulgated thereunder. This administrative regulation establishes detailed procedures for the conduct of administrative hearings held pursuant to KRS 321.360.

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Section 1. Composition of the Board for Purposes of a Hearing.

(1) Disciplinary actions may be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.

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

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

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

Section 2. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard at the hearing, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued in accordance with KRS 321.235(2).

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

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

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

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

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

Section 4. Order of Proceeding. (1) The hearing officer or presiding officer shall call the hearing to order and shall identify the

parties to the action and the persons present and shall read the letter of notice and charges. The hearing officer shall then ask the parties to state any objections or motions. The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.

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

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

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

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

Section 5. Rules of Evidence. (1) The board shall not be bound by the technical rules of evidence. The board may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

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

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

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

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

Section 8. Continuances; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board. However, the burden is upon the licensee or applicant to be present at a scheduled

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hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

JOHN McCLOURE, Board Vice Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1992, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 2,000 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation sets forth the procedures for processing complaints for the board.

(a) Direct and indirect costs or savings: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method preserves the legal rights of all parties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Board of Chiropractic Examiners

201 KAR 21:095. Licensure and registration of persons performing peer review.

RELATES TO: KRS 312.200(3)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY AND FUNCTION: KRS 312.019(9) authorizes the board to adopt administrative regulations. KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration and registration fee for persons to perform those review services.

Section 1. Definitions. (1) The definition of "peer review" is governed by KRS 312.015(4).

(2) "Accepted standards" means those standards of care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(3) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

(4) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges for those services. In determining the reasonableness of cost, factors to be considered would include the usual and customary charges by chiropractors for the same or similar services in the locality where the services were performed.

(5) "Bill for treatment" means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.

(6) "Patient" means an individual who receives treatment from a chiropractor.

(7) "Properly utilized services" means appropriate treatment, services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

Section 2. Requirements for Licensure and Registration. Persons performing chiropractic peer review shall:

(1) Hold a current license to practice chiropractic within the Commonwealth of Kentucky; and

(2) For the first year that a person seeks to register to perform peer review, he shall have previously successfully completed a minimum of sixty (60) hours of utilization review in independent medical examination from a CCE accredited chiropractic college; and for each year thereafter that a person seeks to register to perform peer review, he shall have completed six (6) hours of utilization review offered by a CCE accredited chiropractic college; and

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements set out in this section and of having met the education requirements of KRS 312.175; and

(b) Paying a registration fee of twenty (20) dollars.

DR. HAROLD BYERS, President

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on the 22nd day of February, 1993, at the hour of 10 a.m., EST, in Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494. Persons desiring to be heard shall notify the Kentucky State Board of Chiropractic Examiners in writing at least five days before the scheduled date of the hearing. Send notification to: Conley C.

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Congleton, Assistant Attorney General, Office of the Attorney General, Suite 121, Capitol Building, Frankfort, Kentucky 40601-3494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley C. Congleton

(1) Type and number of entities affected: Chiropractors licensed in Kentucky who have actively practiced for at least 5 years and who desire to perform peer review - number unknown as to how many of the approximately 500 chiropractors licensed in Kentucky have practiced at least 5 years.

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

1. First year: Approximately \$250 costs.

2. Continuing costs or savings: Same per year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Varying cost of 12 hours of annual education in utilization review.

(b) Reporting and paperwork requirements: Applying to board for annual registration - minimal.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Registering those who qualify and apply - minimal.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: Allowing unqualified people to perform peer review.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. All chiropractors licensed in Kentucky and who have actively practiced for at least 5 years have right to qualify and register with board.

GENERAL GOVERNMENT CABINET Kentucky Athletic Commission

201 KAR 27:008. Licensing requirements and fees.

RELATES TO: KRS 229.021, 229.081, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: To establish licensure requirements and fees for participants and for professional matches to be held in the Commonwealth.

Section 1. Annual License for Participants. All persons participating as in a professional match shall be licensed by this commission. All licenses shall expire on December 31 of the year in which they are issued. The license fee for each participant shall be as follows:

(1) Wrestlers and referees of professional wrestling matches - ten (10) dollars;

(2) Boxers and kick boxers - ten (10) dollars;

(3) Judges - ten (10) dollars;

(4) Managers - ten (10) dollars;

(5) Referees of boxing, elimination, and kick boxing - ten (10) dollars; or

(6) Timekeepers - ten (10) dollars.

Section 2. Licenses for Elimination Events. The fee for a contestant to participate in an elimination event shall be four (4)

dollars and shall be valid for the duration of that event only or a maximum of three (3) calendar days from the date of issuance.

Section 3. Annual License for Professional Matches. (1) The annual license for professional matches shall entitle the holder to conduct wrestling, boxing, elimination, or kick boxing events at any location within the Commonwealth for a period of one (1) year from the date of issuance. The fee for the annual license for professional matches shall be \$300. (2) Before an annual license is granted, the applicant shall file with the commission a bond in the sum of \$5,000, to be approved as to form and sufficiency by the commission, conditioned for the payment of compensation to participants or taxes due and payable to the commission pursuant to KRS 229.031.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: January 12, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 300 individuals credentialed by the commission who would come under this regulation.

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

1. First year: This fee structure will actually represent a fee reduction for most persons or promoters. The commission does not anticipate any additional changes in the near future.

2. Continuing costs or savings: All fees will continue at this level for the foreseeable future.

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

(b) Reporting and paperwork requirements: The application fee should accompany the application. All other requirements are the same.

(2) Effects on the promulgating administrative body: This regulation sets the fees for licensees.

(a) Direct and indirect costs or savings: The reduction in fees will hopefully increase revenues by increasing the number of events held in the state.

1. First year: The amount of increase cannot be determined at this time.

2. Continuing costs or savings: The amount of increase cannot be determined at this time.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All funds received are deposited to a trust and agency revolving account. This is their sole source of funding.

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(3) Assessment of anticipated effect on state and local revenues: These fees should generate a sufficient level of funding for agency use.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET Kentucky Athletic Commission

201 KAR 27:012. Wrestling requirements.

RELATES TO: KRS 229.021, 229.081, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: To establish licensure requirements for wrestlers and for wrestling matches to be held in the Commonwealth.

Section 1. The wrestling ring shall:

(1) Be clean, sanitary and free from grit, dirt, resin, or other foreign substances;

(2) Be no smaller than sixteen (16) feet by sixteen (16) feet and shall have no fewer than three (3) ropes; and

(3) Have an area of at least six (6) feet between the edge of the ring and the first row of spectator chairs on all four (4) sides of the ring. Some type of fencing, ropes, or other barricade may be used to separate this area from the spectators.

Section 2. Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility. Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those announced changes or substitutions shall be entitled to receive a refund before commencement of the program. Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of such tickets, if the request is made before the commencement of the first match.

Section 3. Licensed wrestlers who have made a commitment to participate in a professional match and are unable to participate, for any reason, shall notify the promoter of their inability to participate at the earliest possible moment. Failure to notify the promoter in a timely manner shall constitute grounds for possible disciplinary action by the commission.

Section 4. When participating in a match a wrestler shall:

(1) Have his fingernails trimmed well below the tips of the fingers;

(2) Be dressed in clean attire which is in good taste;

(3) Be personally clean and neat in appearance; and

(4) Wear soft soled shoes or no shoes.

Section 5. The following provisions shall relate to wrestling "falls":

(1) Both shoulders pinned to the canvas for the referee's count of three (3) shall constitute a fall. Flying and rolling falls shall not count;

(2) Conceding a fall, or quitting because of having received punishment from a legitimate hold, constitutes a fall; and

(3) The referee shall not place his hands under the shoulders of a contestant unless necessary to determine a fall.

Section 6. When a wrestling contestant rolls off the canvas and outside the ropes, he shall be ordered to return to the middle of the ring to resume the contest. If a contestant fails to obey the referee's order to return to the ring before the referee's count of ten (10) he shall be counted out and the decision awarded to his opponent.

Section 7. The following shall relate to wrestling holds:

(1) Any legitimate holds or methods known to wrestling may be used by the contestant but no deliberate slugging, strangling, gouging, biting, kicking, hair pulling, spitting, or scratching shall be permitted;

(2) No contestant shall be permitted to grasp or hang onto clothing, ring, or ropes for support during the progress of a contest; and

(3) When a referee orders the contestants to break, they must do so within a count of three (3).

TODD J. NEAL, Chairman

APPROVED BY AGENCY: January 12, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1993, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 150 individuals credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Wrestlers must apply and maintain licenses.

(2) Effects on the promulgating administrative body: This regulation assists the agency in overseeing the conduct of wrestling matches by changing from a local license to a statewide license.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements will be the same.

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

(4) Assessment of alternative methods; reasons why alternatives

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were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

TOURISM CABINET

Department of Fish and Wildlife Resources

301 KAR 2:048. Harvest seasons for upland game birds, furbearers and small game on specified wildlife management areas and refuges.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: This administrative regulation pertains to the hunting seasons, bag and possession limits for upland game birds, furbearers and animals on specified wildlife management areas and refuges. This administrative regulation is necessary for the continued protection of these species and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply. This administrative regulation includes the substance from 301 KAR 2:047 and repeals 301 KAR 2:047 in its entirety.

Section 1. All provisions of 301 KAR 2:250 shall apply to wildlife management areas and refuges unless specifically exempted pursuant to Section 3 of this administrative regulation.

Section 2. Any person, except waterfowl hunters, using a wildlife management area during periods when firearms are allowed for deer hunting shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment. Camouflage pattern hunter orange garments do not meet these requirements.

Section 3. Exceptions to 301 KAR 2:250 for Wildlife Management Areas and Refuges. (1) Ballard Wildlife Management Area located in Ballard County. Areas designated by signs are closed to hunting.

(2) Barren River Wildlife Management Area in Allen and Barren Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(3) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties, Mill Creek Wildlife Management Area in Jackson County and Cane Creek Wildlife Management Area in Laurel County and all private inholdings within these areas:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: December 5 through December 31. All trappers shall obtain and complete a harvest survey form obtained from the area manager.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(f) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(g) Shakeout season is closed on these areas.

(4) Big South Fork National River and Recreation Area located in McCreary County:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(5) Central Kentucky Wildlife Management Area located in Madison County:

(a) This area is closed to all upland game bird and small game hunting except squirrel.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials. In addition, unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays and Sundays, and during permitted field trials.

(c) All trappers shall obtain prior written permission from the area manager.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area located in Nicholas County:

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area located in Grant and Kenton Counties:

(a) Areas closed to hunting are designated by refuge signs.

(b) Quail and rabbit: the tenth day after the second Saturday in November through January 31.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area located in Daviess County:

(a) Area closed to hunting and trapping for upland game birds, small game and furbearers.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(9) Dewey Lake Wildlife Management Area in Floyd County, Paintsville Lake Wildlife Management Area in Johnson and Morgan Counties, Fishtrap Lake Wildlife Management Area in Pike County and Redbird Wildlife Management Area in Clay and Leslie Counties:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

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- (c) Quail and rabbit: November 1 through December 31.
- (d) Furbearer: the tenth day after the second Saturday in November through December 31.
- (e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (f) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
- (g) Shakeout season is closed on these areas.
- (10) Fleming Wildlife Management Area located in Fleming County:
- (a) Quail and rabbit: November 1 through December 31.
- (b) Grouse: October 1 through December 31.
- (c) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.
- (d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
- (e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (11) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There shall be no hunting on Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 21-22 and 28-29. There shall be no hunting on December 25 and January 1.
- (a) Seasons, bag and possession limits:
1. Squirrel (gray and fox): third Saturday in August through the last day in January.
 2. Quail: Thanksgiving day through the last day of February.
 3. Rabbit: Thanksgiving day through the last day of February; bag limit five (5); possession limit ten (10).
 4. Raccoon, foxes and opossum: taking with gun or dogs, Thanksgiving day through the last day of January; limit one (1) per person.
 5. Coyote and groundhog: May 13 through August 17 and during any other authorized hunt.
- (b) Permission shall be obtained for each hunt at building #6645 and hunters shall stay within their assigned area. Hunters shall obtain a hunting permit costing fifteen (15) dollars.
- (c) All hunters between the ages of twelve (12) and eighteen (18) shall possess their own hunter safety certificate.
- (12) Fort Knox Wildlife Management Area located in Bullitt, Meade and Hardin Counties:
- (a) Furbearer: trapping is prohibited.
- (b) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.
- (c) Ruffed grouse hunting is open the month of December with a one (1) bird bag limit. All birds must be checked at building #112.
- (d) Area requirements.
- (1) Permission to hunt shall be obtained for each hunt at the Hunt Control Office.
- (2) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (3) Hunters shall stay in their assigned areas.
- (4) All hunters thirty-seven (37) years of age and younger shall possess their own hunter safety certificate.
- (5) Pistols, centerfire rifles and crossbows are prohibited.
- (6) Vehicles are prohibited off maintained roads, except as otherwise authorized.
- (7) All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.
- (13) Grayson Lake Wildlife Management Area in Carter and Elliott Counties:
- (a) Areas designated by signs are closed to hunting.
- (b) Quail and rabbit: November 1 through December 31.
- (c) Grouse: October 1 through December 31.
- (d) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.
- (e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
- (f) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (g) All hunters and dog trainers shall check in and out daily at a designated check station.
- (14) Green River Lake Wildlife Management Area in Taylor and Adair Counties:
- (a) Quail and rabbit: November 1 through January 31.
- (b) Grouse: Closed to hunting.
- (c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
- (d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (15) Higginson-Henry Wildlife Management Area located in Union County:
- (a) Quail and rabbit: November 1 through January 31.
- (b) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.
- (c) All hunters and dog trainers shall check in and out daily at the designated check station.
- (d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (16) Kleber Wildlife Management Area located in Owen and Franklin Counties:
- (a) Quail and rabbit: November 1 through January 31.
- (b) All hunters and dog trainers shall check in and out daily at the designated check station.
- (c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.
- (d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (17) Lake Cumberland Wildlife Management Area - all Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland:
- (a) Grouse: October 1 through December 31.
- (b) Quail and rabbit: November 1 through December 31.
- (c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
- (d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.
- (18) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties. Areas open to hunting for the following species are located north of the state line to Barkley Canal, except that hunting is prohibited in developed public use areas, safety zones and posted areas unless otherwise noted.
- (a) Squirrel (gray and fox): from the third Saturday in August through the fourth Friday in September, December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.
- (b) Quail and rabbit: December 1 through the last day of February.
- (c) Raccoon and Opossum: Tuesday, Thursday, Friday and Saturday nights only during the period December 1 through January 31. Daily bag limit one (1) per person per night. Raccoon and opossum hunters shall check in and out nightly at designated check station. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt. Season shall be closed in some hunt areas as

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posted at designated hunter check stations.

(d) Field trials: September 1 through March 31. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed trial date. Approval shall be obtained from LBL and the Department of Fish and Wildlife Resources First District Captain. Field trials shall be recognized club trials and each participant shall be on a club roster for that trial.

(e) Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September south of Highway 68 to state line.

(f) Fox (gray and red) and bobcat taking: gun and archery on December 1 through January 31.

(g) Groundhog: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(h) Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(i) Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(j) All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting from the fourth Saturday in September through November 30, except in authorized field trials and designated dog training hunt areas.

(k) Trapping for furbearers (including bobcats):

1. No person shall trap furbearers on LBL without a trapping permit. Permits shall be issued by public drawing, with unissued permits made available on a first-come first-served basis.

2. Authorized trappers shall trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: fourteen consecutive days beginning the second Monday in January for all furbearers.

4. Trapping devices: No. 3 or smaller foot-hold traps, padded foot-hold traps and snares without self-locking devices are permitted. The jaws of No. 1 1/2 and larger foot-hold traps used on land shall be offset three-sixteenths (3/16) inch or be padded foot-hold traps. Water sets are restricted to No. 3 or smaller foot-hold traps, padded foot-hold traps, No. 330 or smaller conibear-type traps, and nonlocking snares.

(l) Bobcat: bobcats may be taken only by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any legal method.

2. The bobcat harvest quota is twenty-four (24). Should it be determined that the quota of twenty-four (24) bobcats will be filled prior to January 31, the season shall close. A minimum of twenty-four (24) hours notice of the time and date of closure shall be given.

3. All bobcats shall be tagged before leaving LBL and within forty-eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(m) Weapons restrictions: the use of crossbows, center-fire rifles, center-fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection except that groundhogs may be taken with center-fire rifles during the specified spring season.

(n) Crow: December 1 through the last day of February.

(19) Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading

firearms are permitted for deer hunting.

(20) Peal Wildlife Management Area located in Ballard and Carlisle Counties:

(a) Squirrel (gray and fox): third Saturday in August through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through December 31.

(b) Furbearer: hunting: twenty (20) day taking season commencing the tenth day after the second Saturday in November. Shakeout season is closed on this area.

(c) Furbearer: trapping: December 1 through 10; water sets only; trappers selected by drawing conducted by the area manager.

(d) Quail and rabbit: November 1 through January 31.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(f) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(21) Pennyrite Forest Wildlife Management Area located in Christian, Caldwell and Hopkins Counties and Tradewater Wildlife Management Area located in Christian and Hopkins Counties: upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(22) Pine Mountain Wildlife Management Area located in Letcher County. Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(23) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties.

(a) Hunters on this area shall use pioneer weapons. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows, recurve bows or compound bows and cross-bows.

(b) Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) Breech-loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.

(24) Reelfoot National Wildlife Refuge located in Fulton County:

(a) Squirrel (gray and fox): fourth Saturday in August through October 15 only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the last Wednesday in September and four (4) consecutive nights beginning on the first Wednesday in October on the Long Point refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.

(25) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all hunting.

(26) Sloughs Wildlife Management Area located in Henderson and Union Counties. Frank Sauerheber Unit: areas designated by signs are closed to public access from October 15 through March 15.

(27) Taylorsville Lake Wildlife Management Area in Spencer, Anderson and Nelson Counties:

(a) East of Van Buren Boat Ramp: areas closed to public access the day after the deer quota hunt through March 15 are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31.

(c) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(d) All hunters and dog trainers shall check in and out daily at a designated check station.

(28) West Kentucky Wildlife Management Area located in McCracken County:

(a) Quail and rabbit: November 1 through January 31 on Tracts

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2, 3, 6 and 7; January 1 through 10 or January 1 until maximum acceptable harvest levels have been reached as determined from hunter use data on Tracts 1, 4 and 5. Signs announcing closure will be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(b) Squirrel (gray and fox): from the third Saturday in August through December 31 on Tracts 1 through 7.

(c) Raccoon and Opossum: Tracts 1 through 7. Shakeout season is closed on this area.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Hunting is prohibited on all tracts designated by numbers followed by the letter "A".

(f) Rifles or ball or slug ammunition of any type for taking small game is prohibited.

(g) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(h) Vehicular traffic on Tract 6 is prohibited February 1 through April 16.

(i) Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are allowed for deer hunting.

(29) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.

(30) Yatesville Wildlife Management Area located in Lawrence County:

(a) All hunters and dog trainers shall check in and out daily at a designated check station.

(b) Areas designated by signs are closed to all public access.

(31) Yellowbank Wildlife Management Area located in Breckinridge County:

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(e) Areas within Tract 1 designated by signs are closed to public access from October 15 through March 15.

Section 4. 301 KAR 2:047, Seasons, limits for upland game birds, furbearers and small game on specified wildlife management areas and refuges, is hereby repealed.

DON R. MCCORMICK, Commissioner

DAVID H. GODBY, Chairman

CRIT LUAllen, Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1993, at 1 p.m. in the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 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: Lauren E. Schaaf, Director of

Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: Approximately 340,000 small game hunters and 7,000 trappers are expected to participate in the 1992-93 statewide hunting and trapping seasons. About 14,000 of these can be expected to avail themselves of the opportunity to participate in seasons on the special areas designated in this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license (\$8.50 for residents) or a valid trapping license (\$11.50 resident, \$6 resident landowner/tenant), respectively. A \$15 hunting permit is required by Fort Campbell authorities.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: Hunters are required to check in and/or out at some of the management areas specified in this regulation. Trappers on Mill Creek, Cane Creek and Beaver Creek wildlife management areas are required to complete a harvest survey.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is \$2,500.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 14,000 small game hunters and 140 trappers may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters is \$147 according to the 1985 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was \$209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied: Yes. Variations in habitat, hunting conditions and hunting pressure are recognized at public wildlife management areas. Seasons and limits are set accordingly.

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FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses. This office receives a \$.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET

Department of Fish and Wildlife Resources

301 KAR 4:061. Repeal of 301 KAR 4:060, Fishtrap Lake WMA restrictions.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.300, 150.600, 219.370

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: 301 KAR 4:060 is no longer required because restrictions on use of the area are covered by other administrative regulations.

Section 1. 301 KAR 4:060, Fishtrap Lake WMA restrictions, is hereby repealed.

DON R. McCORMICK, Commissioner

CRIT LUALLEN, Secretary

DAVID H. GODBY, Chairman

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1993, at 3 pm. in the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 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 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: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: Approximately 2,500

people who utilize Fishtrap WMA for recreational purposes are affected by this regulation.

(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: This regulation makes Fishtrap WMA more accessible to the general public and negates need for patrolling of the area during nonhunting season periods by departmental law enforcement personnel.

(a) Direct and indirect costs and savings: Savings should be realized due to no longer needing as much enforcement.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Will remain the same.

(3) Assessment of anticipated effect on state and local revenues: Will remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An alternative would be to maintain closure. Since that option is no longer needed for management purposes, the area should be opened.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation removes a restriction to wildlife related recreationalists. The identification of other classes of citizens is not necessary with this type of regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water

401 KAR 4:300. Permit timetables for 401 KAR Chapter 4.

RELATES TO: KRS 146.200 to 146.360, 151.140, 224.10-100, 224.10-220

STATUTORY AUTHORITY: KRS 146.270, 151.125, 224.10-100, 224.10-220

NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 4, except those permits whose timetables are set out in KRS 146.290 and 151.260.

Section 1. Permit Timetables. The cabinet shall issue its final decision on a complete permit application within the review times specified in this section. A complete permit application shall contain all the administrative and technical information necessary for the cabinet to make its decision on the application. (1)(a) Except as provided in Section 2 of this administrative regulation, within thirty (30) calendar days of initial receipt of an application for permits subject to subsections (2) and (4) of this section, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies which make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any

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aspect of the application is technically sufficient or approvable.

(b) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct the deficiencies within the time frame, the cabinet may return the application.

(c) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies which make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit.

(2) For water withdrawal permits required by KRS 151.140, the review time shall be ninety (90) calendar days after receipt of an administratively complete permit application.

(3) For change of use permits and public hearings for a change of use permit, the review times shall be as specified in KRS 146.290.

(4) For utility right of way and other approvals required by KRS 146.290, the review time shall be sixty (60) calendar days after receipt of an administratively complete permit application.

Section 2. Timetable Exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on an application subject to Section 1(2) or (4) of this administrative regulation shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including but not limited to administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled;

(4) Time waiting for federal, state or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information; and

(5) Other times as agreed to by the applicant and the cabinet.

Section 3. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the timetables under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the time frames or other timetables specified in this administrative regulation may be extended.

Section 4. For permit applications submitted to the division prior to the effective date of this administrative regulation the review times shall be applied as if the application were submitted on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: December 29, 1992

FILED WITH LRC: December 30, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10

a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150.

REGULATORY IMPACT ANALYSIS

Agency Contact: Shelby Jett, P.E.

(1) Type and number of entities affected: This regulation establishes timetables for the Division of Water in issuing permits required by Title 401, Chapter 4 and to applicants for those permits. The types of permits covered by this regulation are the water withdrawal permits required by 401 KAR 4:010 and the utility right-of-way permits for Wild Rivers corridors and other Wild Rivers approvals required by 401 KAR 4:125. While most of the impact of this regulation is on the promulgating administrative body, the regulation could also impact permitted facilities by giving them better information as to when their permit will be issued. Another impact could be in requiring applicants to respond to requests for additional information in a specified time or the permit application may be returned or denied. The Division of Water currently processes about sixty water withdrawal permit applications per year, and about two permit applications per year for Wild Rivers utility right-of-way permits. This regulation is intended to ensure that applicants continue to receive their permits in a timely manner.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected since there are no permit fees associated with the issuance of these permits.

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: The applicant will need to respond to written deficiencies within the required time, if applicable.

(2) Effects on the promulgating administrative body: The major impact of this regulation is on the promulgating agency in that the Division of Water will be required to issue permits in the required time frames. In State Fiscal Year 1992, of the sixty permit applications reviewed for water withdrawal permits, seventeen would not meet the proposed time frame. The Wild Rivers Program in the Water Quality Branch receives about two requests per year for utility right-of-way or other approvals; all of them would meet the required time frame. Another impact of this regulation is the increased paperwork and reporting that will be necessary to maintain records and track the progress of permit applications to ensure that the permits are issued

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in the allotted time frame. While some of the tracking, including computer programming, has already occurred, additional programming may be necessary.

(a) Direct and indirect costs or savings: Since there are no permit fees for water withdrawal permits or utility right-of-way approvals, there are no direct costs or savings associated with the promulgation of this regulation. An indirect cost would be that of any additional computer programming that might be necessary to track the progress of the permit applications.

1. First year: The first year costs could come from additional computer programming and tracking to manage the additional reporting and paperwork requirements. The programming needed is expected to be minor and probably can be accomplished by Cabinet data processing personnel within existing budget constraints.

2. Continuing costs or savings: Continuing costs will be the result of maintaining the databases to manage the permit issuances.

3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See the discussion in (2).

(3) Assessment of anticipated effect on state and local revenues: This regulation does not increase or decrease revenues for state or local agencies because there are no fees associated with water withdrawal or utility right-of-way permits.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A possible alternative of not filing this regulation with the Administrative Regulations Compiler was rejected because the statute requires that timetables be established for all permits issued by the Cabinet. An alternative of shorter time frames was also rejected because the Cabinet could not issue the permits in the shorter time frames. Finally, a third alternative of longer time frames was rejected because the longer time frames would be unnecessary and would delay construction of operation of the facility for the applicant. The time frames in this proposed regulation represent the time necessary for the Cabinet to adequately review the majority of the permits and issue the permits in the allotted time frames while not imposing an undue delay for the applicant.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 401 KAR 4:125 also contains requirements that for utility right-of-way construction permits, the Cabinet shall notify the applicant of its decision that the application is approved or denied within sixty days of receipt of the application.

(a) Necessity of proposed regulation if in conflict: The regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: The regulation is not in conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes, tiering was applied in that different review times are provided for the different types of permits.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to those local government agencies applying for a water withdrawal permit required by 401 KAR 4:010 and for utility right-of-way permits required by 401 KAR 4:125.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation requires that the Cabinet issue permits to municipalities or other local governments in the time frames indicated, and it requires that the municipalities making applications for permits respond to any deficiencies in the permit application within specified times. If the municipality or other

local government agency does not make the corrections in the indicated time, the permit will be returned.

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. There will be no effect on expenditures since there are no fees associated with the issuance of these permits.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal mandates relating to the issuance of these permits.

2. State compliance standards. There are no federal mandates relating to the issuance of these permits.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water

401 KAR 5:300. Permit timetables for 401 KAR Chapter 5.

RELATES TO: KRS 224.10-100, 224.10-220, 224.16-050(1)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220

NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 5.

Section 1. Permit Timetables. This section shall apply for permits required by 401 KAR 5:005 and permits for the transportation of produced water required by 401 KAR 5:090. The cabinet shall issue its final decision on a complete permit application within the review time specified in this section. A complete permit application shall contain all the administrative and technical information necessary for the cabinet to make its decision on the application.

(1) For approvals for the transportation of produced water granted by the cabinet pursuant to 401 KAR 5:090, the review time shall be thirty (30) calendar days after receipt of a complete permit application; and

(2) For permits required by 401 KAR 5:005, the review time shall be forty-five (45) calendar days from receipt of a complete permit application.

Section 2. Timetables for KPDES Permits. This section shall apply for KPDES permits pursuant to KRS 224.16-050(1). The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application, except as provided in Section 3 of this administrative regulation. A complete permit application shall contain all the

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administrative and technical information necessary for the cabinet to make its decision on the application.

(1) Within thirty (30) calendar days of initial receipt of an application for a KPDES permit, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies which make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct identified deficiencies within the time frame, the cabinet may return the application, and the filing fees shall be retained by the cabinet.

(3) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies which make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the filing fee shall be retained by the cabinet.

Section 3. Timetable Exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on a KPDES application shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including but not limited to administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled and held;

(4) Time waiting for federal, state or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information;

(5) Time waiting for permit fees to be paid after the cabinet's final permit decision regarding the application is made; and

(6) Other times as agreed to by the applicant and the cabinet.

Section 4. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times specified in this administrative regulation may be extended.

Section 5. For permit applications submitted to the division prior to the effective date of this administrative regulation, the review times shall be applied as if the application were submitted on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: December 29, 1992

FILED WITH LRC: December 30, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office,
Department for Environmental Protection, 14 Reilly Road, Frankfort,
Kentucky 40601, (502) 564-2150.

REGULATORY IMPACT ANALYSIS

Agency Contact: Shelby Jett, P.E.

(1) Type and number of entities affected: This regulation establishes timetables for the Division of Water in issuing permits required by Title 401, Chapter 5 and to applicants for those permits. While most of the impact of this regulation is on the promulgating administrative body, the regulation could also impact permitted facilities by giving them better information as to when their permit will be issued. Another impact could be in requiring applicants to respond to requests for additional information in a specified time or the permit application may be returned or denied, and any filing fees would be forfeited. The Division of Water currently issues about 600 permit applications per year from industry, municipalities, and nonprofit organizations for the Kentucky Pollutant Discharge Elimination System (KPDES) program and about 200 approvals for the transportation of produced water from oil & gas wells (Transport Off-Site Approvals-TOS). The Facilities Construction Branch, which issues approvals for construction permits of wastewater treatment plants (WWTPs), sewer line extensions, and minor modifications to WWTPs, issues about 800 permit applications per year. This regulation is intended to ensure that applicants continue to receive their permits in a timely manner, and will allow the Cabinet to maintain the fees associated with reviewing permit applications.

(a) Direct and indirect costs or savings to those affected: If the applicant does not respond to deficiencies in the application within the indicated time frame, or other time as agreed to by the Cabinet, the permit application could be returned or denied, and the fees or filing fees retained by the Cabinet. This could represent a cost to the applicant. If the Cabinet does not issue the permit in the required time frame, the permit fees would be returned to the applicant, thus representing a savings to the applicant. Also refer to the discussion in (2) for the amount of fees that may be returned to applicants, if the Cabinet does not process the application in the required amount of time.

1. First year: The first year costs are the same as the costs or savings.

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2. Continuing costs or savings: Same as costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If the Cabinet cannot issue the permits in the allotted time frame due to an inadequate number of permit reviewers, loses a significant portion of expected revenues, and is not able to hire new permit reviewers, the Cabinet may increase permit fees through the regulation promulgation procedures. If that occurred, the increased fees for applicants would be an indirect cost of this regulation.

(b) Reporting and paperwork requirements: The applicant will need to respond to written deficiencies within the required time, if applicable.

(2) Effects on the promulgating administrative body: The major impact of this regulation is on the promulgating agency in that the Division of Water would be required to issue permits in the required time frames or forfeit the permit fee, resulting in a loss of expected funds to operate the Division of Water's programs. The Division of Water's biennial budget is based in part on anticipated revenues from the permit fees. A decrease in anticipated revenue from the permit fees would necessitate cutting the Division's operating costs, thus reducing services provided to the public and industry. Another impact of this regulation is the increased paperwork and reporting that would be necessary to maintain records and track the progress of permit applications to ensure that the permits are issued in the allotted time frame, thus guaranteeing the receipt of the permit fees. Additional paperwork could be the letters sent to applicants to notify them of the receipt of a complete permit application. The Division also will need to establish procedures to return fees for permits that do not meet the established time frames. While some of the tracking and procedures development, including computer programming, has already occurred, additional programming may be necessary.

(a) Direct and indirect costs or savings: In State Fiscal Year 1992 (SFY 92), the Facilities Construction Branch processed about 800 permit applications per year, resulting in about \$182,500 in revenues from permit fees. Under the present application load and staffing level, about 33 applications for the construction of wastewater treatment plants, sewer line extensions, and minor modifications to WWTPs would not be approved in the proposed time frame of 45 days, representing a loss of about \$11,000, if this regulation had been in effect. The Permit Review Branch, which processes the KPDES permits and TOS approvals, approved about 600 permits per year in SFY 92, generating about \$700,000 per year in anticipated revenue. The branch also processed about 200 transport off-site approvals, but that program did not generate any revenue since there are no fees associated with their approvals. Under the present application load and staffing levels, about 75 KPDES permits were not issued in the proposed time frame, representing a loss of about \$116,000 in expected revenues for SFY 92, if this regulation had been in effect.

1. First year: The first year costs could come from additional computer programming and tracking to manage the additional reporting and paperwork requirements and to establish refunding procedures. The programming needed is expected to be minor and probably can be accomplished by Cabinet data processing personnel within existing budget constraints.

2. Continuing costs or savings: Continuing costs will be the result of maintaining the databases to manage the permit issuances and the costs associated with not receiving expected revenues, if the permit is not issued in the required time and administrative costs to return the fees. The Division may also need to pay compensatory time or overtime to permit reviewers and clerical staff if necessary to meet the deadlines on issuing permits.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: See the discussion in (2).

(3) Assessment of anticipated effect on state and local revenues: This regulation does not by itself increase or decrease fees for state or local agencies, but failure of the Cabinet to issue permits in the

time frames specified in this regulation would cause a decrease in anticipated revenue for the Cabinet and a refunding of fees to the state or local agency. Refer also to the discussion in (2) for the impact of loss of revenues to the Division's operating programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A possible alternative of not filing this regulation with the Administrative Regulations Compiler was rejected because the Cabinet would not be allowed to collect fees for permits issued after January 1, 1993, as required by KRS 224.10-220. An alternative of shorter time frames was also rejected because the Cabinet could not issue the permits in the shorter time frames and thus the Cabinet would lose even more fees associated with the permits that were not issued in the shorter time frame. Finally, a third alternative of longer time frames was rejected because the longer time frames would be unnecessary and would delay construction or operation of the facility for the applicant. The time frames in this proposed regulation represent the time necessary for the Cabinet to adequately review the majority of the permits and issue the permits in the allotted time frames, thus guaranteeing the revenues that are anticipated from the issuance of those permits, while not imposing an undue delay for the applicant.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Although not a direct conflict, 401 KAR 5:005 and 5:060 might be construed to contain conflicts. Those regulations state that an applicant should submit a permit application either 30 or 150 days before a permit for the Facilities Construction or KPDES program, respectively, is desired, but there are no requirements that the Cabinet then issue the permit in the specified time frame. Also, 401 KAR 5:075 contains some requirements for actions by the Cabinet which might represent conflicts.

(a) Necessity of proposed regulation if in conflict: The Cabinet cannot process the permit applications in the implied time given in the regulation, and thus would lose the revenues from the issuance of those permits. Also, the federal NPDES program allows 180 days for review of federal permit applications, as specified in 40 CFR 122.21. If the Cabinet were required to keep the time frames implied in the present regulations, 79 approvals in the Facilities Construction program would exceed the established time frames, resulting in about a \$29,500 in lost revenues, and in the KPDES program, about 100 permits would exceed the established time frames, resulting in about \$150,000 in lost revenues.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Yes. The Cabinet will amend the indicated regulations in the near future to remove the possible conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes, tiering was applied in that different review times are provided for different permits, depending on the complexity of those permits. Generally, the complexity is also a function of the size of the facility.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to those local government agencies applying for a Kentucky Pollutant Discharge Elimination System (KPDES) permit, or approval for the construction of a wastewater treatment plant (WWTP), sewer line extension, or minor modification to a WWTP which are charged fees. The Cabinet does not require permit fees from publically owned facilities (i.e. those owned by the Commonwealth or its political subdivisions).

3. State the aspect or service of local government to which this

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administrative regulation relates. This regulation requires that the Cabinet issue permits to municipalities or other local governments in the time frames indicated, or the fees will be returned to the applicant. It also requires that the municipalities making applications for permits respond to any deficiencies in the permit application within specified times. If the municipality or other local government agency does not make the corrections in the indicated time, the permit will be returned, and the fees required to be submitted with the application will be forfeited.

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. There will be no major effect; those local agencies which do not respond to requests for additional information in the allotted time will forfeit their fees, representing a net loss for the local agency, while there will be a net gain of the permit fee to the local agency if the Cabinet does not issue the permit in its required time.

Revenues (+/-): See above.

Expenditures (+/-): See above.

Other explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 122.21 contains the requirements for the National Pollutant Discharge Elimination System (NPDES), which is the basis for the Kentucky program (KPDES). However, it does not contain a mandate that the federal or state government issue a permit in a specified amount of time. There is no federal mandate for the Facilities Construction program.

2. State compliance standards. Section 3 of this regulation.

3. Minimum or uniform standards contained in the federal mandate. While the federal regulation does not state how soon a permit will be issued after the submittal of a permit application, and thus is not a mandate on the federal government to issue the permit, 40 CFR 122.21 specifies that applicants for NPDES permits shall submit a permit application at least 180 days before the discharge is to commence, or 90 days for facilities described under 122.26(b)(14)(x). However, the regulation further states that "persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay".

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation is not stricter than the federal requirement since there is no federal requirement that a permit be issued in a specified amount of time.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water

401 KAR 8:101. Approval timetable for 401 KAR Chapter 8.

RELATES TO: KRS 224.10-100, 224.10-220

STATUTORY AUTHORITY: KRS 224.10-110, 224.10-220

NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for approvals that are required by

401 KAR Chapter 8.

Section 1. Approval Timetables. The cabinet shall issue its final decision on a request for a preliminary or final approval of plans and specification reviews within forty-five (45) calendar days of receipt of the complete request for approval. A complete request for approval shall contain all the administrative and technical information necessary for the cabinet to make its decision on the request for approval.

Section 2. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times specified in this administrative regulation may be extended.

Section 3. For applications for approvals submitted to the division prior to the effective date of this administrative regulation, the review times shall be applied as if the application were received on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary

JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: December 29, 1992

FILED WITH LRC: December 30, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150.

REGULATORY IMPACT ANALYSIS

Agency Contact: Shelby Jett, P.E.

(1) Type and number of entities affected: This regulation establishes timetables for the Division of Water in issuing preliminary and final approvals of plans and specifications for public and semipublic

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water systems required by Title 401, Chapter 8 and to applicants for those approvals. While most of the impact of this regulation is on the promulgating administrative body, the regulation could also impact the water systems by giving them better information as to when their approvals will be issued. The Division of Water currently processes about 900 applications for approvals per year from public and semipublic water systems. This regulation is intended to ensure that applicants continue to receive their approvals in a timely manner, and will allow the Cabinet to maintain the fees associated with reviewing the applications.

(a) Direct and indirect costs or savings to those affected: If the Cabinet does not issue the approval in the required time frame, the fees would be forfeited to the applicant, thus representing a savings to the applicant. Also refer to the discussion in (2) for the amount of fees that may be returned to applicants, if the Cabinet does not process the application in the required amount of time.

1. First year: The first year savings are no different than the overall savings.

2. Continuing costs or savings: Same as the overall savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If the Cabinet cannot issue the approvals in the allotted time frame due to an inadequate number of reviewers, loses a significant portion of expected revenues, and is not able to hire new reviewers, the Cabinet may increase fees through the regulation promulgation procedures. If that occurred, the increased fees would be an indirect cost of this regulation.

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body: The major impact of this regulation is on the promulgating agency in that the Division of Water would be required to issue plan approvals in the required time frames or forfeit the fee, resulting in a loss of expected funds to operate the Division of Water's programs. The Division of Water's biennial budget is based in part on anticipated revenues from the fees associated with processing applications for approvals. A decrease in anticipated revenue from the fees would necessitate cutting the Division's operating costs, thus reducing services provided to the public and industry. Another impact of this regulation is the increased paperwork and reporting that would be necessary to maintain records and track the progress of permit applications to ensure that the permits are issued in the allotted time frame, thus guaranteeing the receipt of the permit fees. The Division also will need to establish procedures to return fees for permits that do not meet the established time frames. While some of the tracking and procedures development, including computer programming, has already occurred, additional programming may be necessary.

(a) Direct and indirect costs or savings: The Drinking Water Branch currently processes about 920 applications for preliminary and final approvals of plans and specifications for public and semipublic water systems per year. In State Fiscal Year 1992, under the present approval application load and staffing level, about 15 approvals were not issued in the proposed time frame, which would represent a loss of about \$11,000 in anticipated revenues annually if this regulation had been in effect.

1. First year: The first year costs could come from additional computer programming and tracking to manage the additional reporting and paperwork requirements and to establish fee refunding procedures. The programming needed is expected to be minor and probably can be accomplished by Cabinet data processing personnel within existing budget constraints.

2. Continuing costs or savings: Continuing costs will be the result of maintaining the databases to manage the approval issuances and the costs associated with not receiving expected revenues, if the approval is not issued in the required time and administrative costs to return the fees. The Division may also pay permit reviewers and clerical staff compensatory time or overtime, if necessary to meet the proposed deadlines on issuing permits.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: See the discussion in (2).

(3) Assessment of anticipated effect on state and local revenues: This regulation does not by itself increase or decrease fees for state or local agencies, but failure of the Cabinet to issue permits in the time frames specified in this regulation would cause a decrease in anticipated revenue for the Cabinet and a refunding of fees to the state or local agency. Refer also to the discussion in (2) for the impact of loss of revenues to the Division's operating programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A possible alternative of not filing this regulation with the Administrative Regulations Compiler was rejected because the Cabinet would not be allowed to collect fees for approvals issued after January 1, 1993, as required by KRS 224.10-220. An alternative of shorter time frames was also rejected because the Cabinet could not issue the approvals in the shorter time frames and thus the Cabinet would lose even more fees associated with the approvals that were not issued in the shorter time frame. Finally, a third alternative of longer time frames was rejected because the longer time frames would be unnecessary and would delay construction of operation of the public water system for the applicant. The time frames in this proposed regulation represent the time necessary for the Cabinet to adequately review the majority of the approvals and issue the approvals in the allotted time frames, thus guaranteeing the revenues that are anticipated from the issuance of those approvals, while not imposing an undue delay for the applicant.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Although not a direct conflict, 401 KAR 8:100 might be construed to contain a conflict. That regulation states that an applicant should submit an application thirty days before the approval is desired, but there are no requirements that the Cabinet then issue the approval in a specified time frame.

(a) Necessity of proposed regulation if in conflict: The Cabinet cannot process the permit applications in the implied time given in the regulation, and thus would lose the revenues from the issuance of those permits. Based on current applications and staff load, thirty-three permits would not be issued in the thirty day time frame, representing lost revenues of \$1,750, as compared to fifteen permits representing lost revenues of \$1,150 that would not be issued in a time frame of forty-five days.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Yes. The Cabinet will amend the indicated regulation in the near future to correct the possible conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. Tiering was not necessary because this regulation applies only to preliminary and final approvals of plans and specifications for public and semipublic water systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to those local government agencies requesting approvals for plans and specifications for public and semi-public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation requires that the Cabinet issue approvals to municipalities or other local governments in the time frames indicated, or any fees will be returned to the applicant. The Cabinet does not require permit fees from publically owned facilities (i.e. those owned by the Commonwealth or its political subdivisions).

4. Estimate the effect of this administrative regulation on the

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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. There will be no effect.

Revenues (+/-): See above.

Expenditures (+/-): See above.

Other explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. There is no federal mandate.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management

401 KAR 38:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for hazardous waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This regulation sets forth timetables for the review and determination of hazardous waste permit applications.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 to 39.

Section 2. Timetables for Hazardous Waste Permit Review and Determination. (1) If a Part A application is required under KRS Chapter 224 and 401 KAR Chapters 30 to 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in subsection (2) of this section.

(2) All hazardous waste permit applications shall be reviewed and a determination made to issue or deny the permit within the following timetables:

(a) Part B Applications for New Hazardous Waste Permits for Storage in Containers or Tanks only: 180 calendar days.

(b) Part B Applications for New Hazardous Waste Permits for Storage and Treatment in Containers or Tanks: 365 calendar days.

(c) Part B Applications for New Hazardous Waste Incinerators: 365 calendar days.

(d) Part B Applications for Facilities with Land-based Units (Surface Impoundments, Waste Piles, Land Treatment Units,

Landfills) and other Miscellaneous Units: 365 calendar days.

(e) Application Review for Major Modifications to a Hazardous Waste Permit: 365 calendar days.

(f) Minor Modifications to a Hazardous Waste Permit requiring approval: ninety (90) calendar days.

(g) Closure Plan with Groundwater Monitoring: 365 calendar days.

(h) Closure Plan without Groundwater Monitoring: 180 calendar days.

(i) Facilities that gain interim status through federal regulations published after the effective date of this regulation shall negotiate a schedule based on the procedures necessary to secure a complete review of the permit application.

(j) Applications for renewals shall be reviewed and a determination made to issue or deny the permit within the timetables identified in paragraphs (a) to (d) of this subsection for that type of facility.

(3) The timetables specified in subsections (1) and (2) of this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(4) If a hazardous waste permit application requires more than one (1) type of permit action as set forth in subsection (2) of this section, then the review time for each permit action shall apply and run consecutively when computing the total review time for the issuance or denial of the permit.

Section 3. Timetable Exclusions. The time periods specified in Section 2 of this regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant. Failure to respond to a notice of deficiency within the specified time shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(3) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives EPA's comments;

(4) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings; and

(5) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

Section 4. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 5. Applicability Dates. (1) The provisions of this regulation shall apply to applications received after the effective date of this regulation.

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(2)(a) Applications pending on the effective date of this regulation shall not be subject to the timetables of this regulation unless, within ninety (90) days of the effective date of this regulation, the applicant submits written notification to the cabinet that processing of the application is desired.

(b) If the applicant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application shall not be subject to the provisions of this regulation.

(c) Applications for which the cabinet receives written notice in accordance with the provisions of paragraph (a) of this subsection shall be subject to all provisions of this regulation beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: December 29, 1992

FILED WITH LRC: December 30, 1992 at 8 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150.

REGULATORY IMPACT ANALYSIS

Agency contact: Shelby Jett

(1) Type and number of entities affected: This proposal affects those persons seeking to obtain a hazardous waste permit. There are approximately 280 applications currently pending review. The cabinet receives approximately five applications per month for review.

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

1. First year: If the applicant does not diligently pursue correction of deficiencies, the cabinet will deny the permit when the time limits expire. Application fees will be forfeited. If the cabinet fails to meet a timetable to issue or deny a permit, the permit fee is waived, and therefore could be considered a savings to the applicant or registrant.

2. Continuing costs or savings: The "savings" discussed above will continue during subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): In order to have their permit applications and registrations approved within the established time frames, applicants will be required to make complete responses to notices of deficiency. Also, the cabinet may have to increase permit fees in the future to allow the cabinet to hire sufficient resources to review permit

applications within the time frames proposed. Such an increase would be established by administrative regulation.

(b) Reporting and paperwork requirements: Those applicants with applications pending review at the time this proposal goes into effect must notify the cabinet in order to have their applications assigned a timetable. Those applicants that do not notify the cabinet will not be subject to this proposal.

(2) Effects on the promulgating administrative body: Under present funding and staffing, the cabinet may be adversely affected if timetables cannot be met. Given the limited resources to review applications, the cabinet may either lose money or be forced to issue or deny permits with less critical review.

(a) Direct and indirect costs or savings:

1. First year: This proposal could cost the cabinet in terms of overtime payments to personnel to meet timetables. It could also decrease funds received from permitting fees.

2. Continuing costs or savings: Those identified above will continue for subsequent years.

3. Additional factors increasing or decreasing costs: In addition to permit review, the review staff must also process quarterly and annual reports, monitor groundwater well installation, participate in meetings regarding program development and attend training functions. These other duties could prevent the cabinet from meeting timetables given the lack of adequate funding and staffing.

(b) Reporting and paperwork requirements: This proposal requires the cabinet to send applicants, upon receipt of applications, a letter breaking down the permit review phases with due dates for each phase.

(3) Assessment of anticipated effect on state and local revenues: If the cabinet fails to meet a timetable, the state will lose revenue in the form of permit fees.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to this proposal as mandated by KRS 224.10-220.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Different permit application types have different timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

2. State compliance standards: This proposal is in response to KRS 224.10-220. There is no federal mandate.

3. Minimum or uniform standards contained in the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposal is in response to KRS 224.10-220. There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This proposal is in response to KRS 224.10-220. There is no federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this

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administrative regulation will affect. This regulation applies to any local government agency required to obtain a hazardous waste permit from the cabinet.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation establishes timeframes for the review and issuance of hazardous waste permits. These timeframes will apply to permits for hazardous waste facilities of local government agencies. Included in these timeframes are requirements for applicants to respond to notices of deficiencies within a specified period. If the deficiencies are not corrected, the permit may be denied. The regulation, coupled with KRS 224.10-220, also require the cabinet to take action on permit applications within a specified period, or the permit fee will be waived. (Note that the cabinet does not require permit fees from publicly-owned facilities (i.e., those owned by the Commonwealth or its political subdivisions).)

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. Since the Cabinet does not require permit fees for publicly-owned facilities, this regulation will not affect the revenues and expenditures of local government agencies.

Revenues (=/-): None
Expenditures (=/-): None
Other explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management

401 KAR 45:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This regulation sets forth timetables for the review and determination of special waste permit applications and registrations.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45.

Section 2. Administrative Completeness Determination. (1) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet. An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is

administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

(b) If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete.

(c) The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant renders the application or registration administratively complete within the specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

2. If the cabinet determines that the application or registration is not administratively complete at the end of the period specified in this subsection, the cabinet shall make a written determination to deny the permit with the stated reason that the application or registration, in its current form, fails to comply with the requirement to submit a complete application. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered as if not previously submitted for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination. (1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

- (a) Special Waste Formal Permit: 180 calendar days.
- (b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.
- (c) Registered Permit-by-rule: ninety (90) calendar days.
- (d) Research, Development, and Demonstration Permit: 180 calendar days.
- (e) Special Waste Permit modifications: 180 calendar days.
- (f) Permit transfer: 180 calendar days.
- (g) Permit renewal: ninety (90) calendar days.
- (h) Any other permit action not specifically set forth in this section: ninety (90) calendar days.

(2) The timetables specified in subsection (1) of this section may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods specified in Section 3 of this administrative regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or

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registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing or meeting on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 6. Applicability Dates. (1) The provisions of this administrative regulation shall apply to applications and registrations received after the effective date of this administrative regulation.

(2)(a) The cabinet shall not process applications and regulations pending on the effective date of this administrative regulation unless, within ninety (90) days of the effective date of this administrative regulation, the applicant or registrant submits written notification to the cabinet that processing of the application or registration is desired.

(b) If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall be considered withdrawn by the applicant or registrant and shall not be subject to further processing by the cabinet.

(c) Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10:00 a.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and

services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150

REGULATORY IMPACT ANALYSIS

Agency Contact: Shelby Jett

(1) **Type and number of entities affected:** This proposal affects those persons seeking to obtain a special waste formal permit or registration. Special waste regulations went into effect in June 1992, therefore there does not exist a track record sufficient to determine a specific number of entities affected.

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

1. **First year:** If the applicant or registrant does not diligently pursue correction of deficiencies, the cabinet will deny the permit when the time limits expire. Application fees will be forfeited. If the cabinet fails to meet a timetable to issue or deny a permit, the permit fee is waived, and therefore could be considered a savings to the applicant or registrant.

2. **Continuing costs or savings:** The "savings" discussed above will continue during subsequent years.

3. **Additional factors increasing or decreasing costs** (note any effects upon competition): In order to have their permit applications and registrations approved within the established time frames, applicants and registrants will be required to make complete responses to notices of deficiency. Also, the cabinet may increase permit fees in the future to enable a more timely review of permit applications and registration. Such an increase would be established by administrative regulation.

(b) **Reporting and paperwork requirements:** Applicants and registrants for documents pending at the time this proposal goes into effect must notify the cabinet that they desire to have their applications and registrations reviewed. Failure to notify the cabinet will result in applications and registrations being considered withdrawn by the applicants and registrants.

(2) **Effects on the promulgating administrative body:** Under present funding and staffing, the cabinet may be adversely affected if timetables cannot be met. Given the limited resources to review applications and registrations, the cabinet may either lose money or be forced to issue or deny permits with less critical review.

(a) **Direct and indirect costs or savings:**

1. **First year:** This proposal could cost the cabinet in terms of overtime payments to personnel to meet timetables. It could also decrease funds received from permitting fees.

2. **Continuing costs or savings:** Those identified above will continue for subsequent years.

3. **Additional factors increasing or decreasing costs:** In addition to permit review, the review staff must also process quarterly and annual reports, monitor groundwater well installation, inspect liners, and conduct operator certification training. These other duties could prevent the cabinet from meeting timetables given the lack of adequate funding and staffing.

(b) **Reporting and paperwork requirements:** This proposal requires the cabinet to send applicants and registrants a notice of deficiency during an administrative completeness review process, and to notify applicants and registrants that the timetable for the permit has commenced.

(3) **Assessment of anticipated effect on state and local revenues:** If the cabinet fails to meet a timetable, the state will lose revenue in the form of permit fees.

(4) **Assessment of alternative methods; reasons why alternatives were rejected:** There are no alternatives to this proposal as mandated

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by KRS 224.10-220.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Different permit application and registration types have different timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

2. State compliance standards: This proposal is in response to KRS 224.10-220. There is no federal mandate.

3. Minimum or uniform standards contained in the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposal is in response to KRS 224.10-220. There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This proposal is in response to KRS 224.10-220. There is no federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to any local government agency required to obtain a special waste permit from the cabinet.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation establishes timeframes for the review and issuance of special waste permits. These timeframes will apply to permits for special waste facilities of local government agencies. Included in these timeframes are requirements for applicants to respond to notices of deficiencies within a specified period. If the deficiencies are not corrected, the permit may be denied. The regulation, coupled with KRS 224.10-220, also require the cabinet to take action on permit applications within a specified period, or the permit fee will be waived. (Note that the cabinet does not require permit fees from publicly-owned facilities (i.e., those owned by the Commonwealth or its political subdivisions).)

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. Since the cabinet does not require permit fees for publicly-owned facilities, this regulation will not affect the revenues and expenditures of local government agencies.

Revenues (=/-+): None

Expenditures (=/-): None

Other explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management

401 KAR 47:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of solid wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all solid waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications and registrations. This administrative regulation sets forth timetables for the review and determination of solid waste permit applications and registrations.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a solid waste permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30, 47, and 48.

Section 2. Administrative Completeness Determination. (1) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by KRS Chapter 224 and 401 KAR Chapters 30, 47, and 48 that are necessary to allow meaningful review by the cabinet. An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

(b) If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete.

(c) The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant renders the application or registration administratively complete within the specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative

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regulation has commenced.

2. If the cabinet determines that the application or registration is not administratively complete at the end of the period specified in this subsection, the cabinet shall make a written determination to deny the permit with the stated reason that the application or registration, in its current form, fails to comply with the requirement to submit a complete application. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered as if not previously submitted for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination. (1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

(a) Application to Construct a New Solid Waste Disposal Facility or to Horizontally Expand an Existing Solid Waste Disposal Facility: the timetable is specified in KRS 224.40-310(10).

(b) Research, Development, and Demonstration Permit: 180 calendar days.

(c) Permit modifications: 180 calendar days.

(d) Closure Permit: 180 calendar days.

(e) Permit transfer: 180 calendar days.

(f) Permit renewal: 180 calendar days.

(g) Registered Permit-by-rule: ninety (90) calendar days.

(h) Any other permit action not specifically set forth in this section: ninety (90) calendar days.

(2) The timetables specified in subsection (1) of this section may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods specified in Section 3 of this administrative regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing or meeting on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 6. Applicability Dates. (1) The provisions of this administrative regulation shall apply to applications and registrations received after the effective date of this administrative regulation.

(2)(a) The cabinet shall not process applications and registrations pending on the effective date of this administrative regulation unless, within ninety (90) days of the effective date of this administrative regulation, the applicant or registrant submits written notification to the cabinet that processing of the application or registration is desired.

(b) If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall be considered withdrawn by the applicant or registrant and shall not be subject to further processing by the cabinet.

(c) Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.

PHILLIP J. SHEPHERD, Secretary

JUDITH A. VILLINES, Commissioner

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for February 25, 1993 at 10 p.m. EST at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Shelby Jett in writing at the address noted below by February 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 wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the department a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Jett no later than 4:30 p.m. on February 25, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Jett at the address below.

CONTACT PERSON: Shelby Jett, P.E., Commissioner's Office, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150.

REGULATORY IMPACT ANALYSIS

Agency Contact: Shelby Jett

(1) Type and number of entities affected: This proposal affects those persons seeking to obtain a solid waste permit or registration. There are approximately 1,000 applications and registrations currently pending review. The cabinet receives approximately 50 applications and registrations per month for review.

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

1. First year: If the applicant does not diligently pursue correction of deficiencies, the cabinet will deny the permit when the time limits expire. Application fees will be forfeited. If the cabinet fails to meet a timetable to issue or deny a permit, the permit fee is waived, and therefore could be considered a savings to the applicant or registrant.

2. Continuing costs or savings: The "savings" discussed above will continue during subsequent years.

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3. Additional factors increasing or decreasing costs (note any effects upon competition): In order to have their permit applications and registrations approved within the established time frames, applicants and registrants will be required to make complete responses to notices of deficiency. Also, the cabinet may increase permit fees in the future to enable a more timely review of permit applications and registration. Such an increase would be established by administrative regulation.

(b) Reporting and paperwork requirements: Applicants and registrants for documents pending at the time this proposal goes into effect must notify the cabinet that they desire to have their applications and registrations reviewed. Failure to notify the cabinet will result in applications and registrations being considered withdrawn by the applicants and registrants.

(2) Effects on the promulgating administrative body: Under present funding and staffing, the cabinet may be adversely affected if timetables cannot be met. Given the limited resources to review applications, the cabinet may either lose money or be forced to issue or deny permits with less critical review.

(a) Direct and indirect costs or savings:

1. First year: This proposal could cost the cabinet in terms of overtime payments to personnel to meet timetables. It could also decrease funds received from permitting fees.

2. Continuing costs or savings: Those identified above will continue for subsequent years.

3. Additional factors increasing or decreasing costs: In addition to permit review, the review staff must also process quarterly and annual reports, monitor groundwater well installation, inspect liners, and conduct operator certification training. These other duties could prevent the cabinet from meeting timetables given the lack of adequate funding and staffing.

(b) Reporting and paperwork requirements: This proposal requires the cabinet to send applicants, upon receipt of applications a letter breaking down the permit review phases with due dates for each phase.

(3) Assessment of anticipated effect on state and local revenues: If the cabinet fails to meet a timetable, the state will lose revenue in the form of permit fees.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to this proposal as mandated by KRS 224.10-220.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. Different permit application and registration types have different timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

2. State compliance standards: This proposal is in response to KRS 224.10-220. There is no federal mandate.

3. Minimum or uniform standards contained in the federal mandate: This proposal is in response to KRS 224.10-220. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposal is in response to KRS 224.10-220. There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This proposal is in response to KRS 224.10-220. There is no federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to any local government agency required to obtain a solid waste permit from the cabinet.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation establishes time frames for the review and issuance of solid waste permits. These time frames will apply to permits for solid waste facilities of local government agencies. Included in these time frames are requirements for applicants to respond to notices of deficiencies within a specified period. If the deficiencies are not corrected, the permit may be denied. The regulation, coupled with KRS 224.10-220, also require the cabinet to take action on permit applications within a specified period, or the permit fee will be waived. (Note that the cabinet does not require permit fees from publicly-owned facilities (i.e., those owned by the Commonwealth or its political subdivisions).)

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. Since the cabinet does not require permit fees for publicly-owned facilities, this regulation will not affect the revenues and expenditures of local government agencies.

Revenues (=/-+): None

Expenditures (=/-): None

Other explanation: None

KENTUCKY PAROLE BOARD

501 KAR 1:060. Conducting parole and parole revocation hearings.

RELATES TO: KRS 61.800, 439.340

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.340(3)

NECESSITY AND FUNCTION: KRS 439.340(3) authorizes the Parole Board to adopt administrative regulations with respect to the conduct of parole and parole revocation hearings. The purpose of this administrative regulation is to describe the parole hearing process and how the public is to be accommodated.

Section 1. Parole hearings are open to the public except as limited by the exemption of parole deliberations under the Open Meetings Law (KRS 61.810(1)(a)), the right of victims to request a closed hearing for their presentation (KRS 439.340(7)), the State Fire Code (815 KAR 10:040), or persons excluded from visiting prisons (501 KAR 2:020, Section 1).

(1) Persons desiring to attend parole hearings shall submit a written notice to the Parole Board not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the hearing, of their intention to attend the hearing. The written notice shall include the person's name, address, telephone number (if available) and Social Security number.

(2) The Parole Board shall submit such notices to the warden of the institution where the parole hearing is to be conducted.

(3) Persons in attendance, except for the Parole Board and the inmate, shall observe only. No one shall be permitted to address the Parole Board or inmate except as provided in KRS 439.340(6), (7). If a majority of the sitting board deem and individual disruptive, he may be removed by institutional staff.

(4) Electronic recording devices of any type shall not be permitted.

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(5) All persons in attendance, except for Parole Board staff, shall leave the parole hearing room during the deliberations of the board.

(6) The Parole Board may go into executive session at any time in order to discuss statutorily confidential information.

(7) After the Parole Board deliberates the public shall be readmitted to the hearing room for the Parole Board to deliver its decision to the inmate.

Section 2. The parole hearing shall be conducted in the following manner:

(1) Each inmate eligible for a parole hearing shall personally appear before the Parole Board.

(2) An inmate may waive his right to a personal appearance before the board by submitting a signed, dated and witnessed statement to that effect. The statement shall be witnessed by the institutional parole officer or someone who serves in a similar capacity.

(3) The Parole Board shall conduct an interview based upon the pertinent information contained in the inmate's file.

(4) The inmate shall be permitted to make any statement on his own behalf which either mitigates the crime or describes his rehabilitative efforts.

(5) At the conclusion of the interview the inmate shall leave the hearing room during the deliberation of the board.

(6) After the deliberation is completed the inmate shall return to the hearing room to receive the board's decision.

(7) The decision of the board shall be delivered in writing and orally.

JOHN C. RUNDA, Ph.D., Chairman

APPROVED BY AGENCY: December 23, 1992

FILED WITH LRC: December 23, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 26, 1993 at 9 a.m. in the Corrections Conference Room, 5th Floor, State Office Building. Those interested in attending this hearing shall notify in writing: John C. Runda, Ph.D., Chairman, Kentucky Parole Board, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John C. Runda

(1) Type and number of entities affected: 2,926 employees of the Corrections Cabinet, 10,464 inmates, 0 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 of the Department of Corrections.

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:

TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the administrative 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 Fourteenth 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.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 5:001. Repeal of 501 KAR Chapter 5.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. The Jail Standards Review Committee which was formed pursuant to KRS 441.055 reviewed all existing jail standards. It was the recommendation of this committee to revise the regulations and combine the ninety-six (96) hour and twelve (12) hour holdover standards. As a result, the following twelve (12) hour holdover regulations are hereby repealed.

Section 1. This regulation hereby repeals: 501 KAR 5:010, 501 KAR 5:020, 501 KAR 5:030, 501 KAR 5:040, 501 KAR 5:050, 501 KAR 5:060, 501 KAR 5:070, 501 KAR 5:080, 501 KAR 5:090, 501 KAR 5:100, 501 KAR 5:110, 501 KAR 5:120, 501 KAR 5:130, and 501 KAR 5:140.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jail and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, regional jail authority, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, and other personnel involved in the supervision, custody, care or treatment of prisoners in the jail.

(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

(a) Charged with or convicted of an offense;

(b) Held for extradition or as a material witness; or

(c) Confined for any reason.

(5) "Department" means the Department of Corrections.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Direct supervision area" means a group of cells adjacent to a dayroom area which provides housing for up to forty-eight (48) inmates. A staff member shall be stationed within each direct supervision area in order to control inmate behavior.

(9) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(10) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(11) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(12) "Dormitory" is an area equipped for housing not less than three (3) persons or more than sixteen (16) persons.

(13) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(14) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(15) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

(16) "Penal type" means furnishings approved by the Department of Corrections.

(17) "Commercial type" means furnishings of a commercial or industrial grade approved by the Department of Corrections.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

(3) Assessment of anticipated effect on state and local revenues:

ADMINISTRATIVE REGISTER - 1957

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:020. Administration; management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to be followed for the administration and management of jails.

Section 1. Policy and Procedure - Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:

(a) Administration.

(b) Fiscal management.

(c) Personnel.

(d) Security and control.

(e) Sanitation and hygiene.

(f) Medical services.

(g) Food services.

(h) Emergency and safety procedures.

(i) Classification.

(j) Inmate programs.

(k) Inmate services.

(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

Section 3. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and inmates shall have access to the procedures.

(2) With the consent of the inmate, news media shall be permitted to interview any inmate as set forth in the jail's policy and procedure manual except when the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for inmate interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of inmate information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the inmate; and

(c) Private citizens shall only be provided with information supplied to the media.

(6) No information shall be released that is detrimental to another inmate.

Section 4. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Jail information and inmate records shall be retained in written form or within computer records.

(2) Jail staff when stationed in a direct supervision area shall have direct access to inmate records.

(3) Jail information and inmate records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time an inmate record shall be maintained after an inmate's release from custody and the conditions under which archives are maintained.

(4) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include but not be limited to:

(a) Death of an inmate.

(b) Attempted suicide or suicide.

(c) Serious injury, whether accidental or self-inflicted.

(d) Attempted escape or escape from confinement.

(e) Fire.

(f) Riot.

(g) Battery, whether by a staff member or inmate.

(h) Sexual assaults.

(i) Occurrence of contagious or infectious disease, or illness within the jail.

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(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or inmates known to be or suspected to be mentally ill or mentally retarded.

(5) All jails shall keep a log of daily activity within the jail.

(6) Each jail shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 5. Inmate Records. (1) The information required by 501 KAR 10:120 and 10:130 for admission and release shall be retained for each inmate. Other information related in each inmate's jail record shall include but not be limited to:

(a) Court orders.

(b) Personal property receipts.

(c) Infraction reports.

(d) Reports of disciplinary actions.

(e) Work record and program involvement.

(f) Unusual occurrences and in the case of death of an inmate, disposition of the inmate's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 10:090.

(3) The jailer shall ensure that inmate records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that inmates sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the inmate's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.

(b) Name of facility releasing information.

(c) Specific information to be disclosed.

(d) Purpose of the information.

(e) Date consent form is signed.

(f) Signature of inmate.

(g) Signature of employee witnessing the inmate's signature.

(5) Juvenile jail records shall be kept separate from adult jail records and shall be made available for examination only as provided in KRS 208.340. Upon an order of expungement pursuant to KRS 208.275, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay in the jail shall be deemed never to have occurred.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:030. Fiscal management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth physical management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer, county judge/executive and

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treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.

(2) The jailer shall use the format for budget development on forms prepared by the state and local finance office.

(3) The state and local finance office shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide inmates with approved items.

Section 4. Audits. The county jail budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate

in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

(2) When female inmates are lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.

(2) All security employees of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the jail shall receive salaries at least equal to minimum wage.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the Department of Corrections.

(a) Local corrections training efforts shall be certified by the Department of Corrections.

(b) The Curriculum Advisory Committee shall advise the Department of Corrections on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the

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Department of Corrections.

(2) Deputy jailers, correctional officers and other employees whose jobs require supervision of inmates shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Department of Corrections on a regional or local basis.

(3) Jail staff whose job requires the supervision of inmates in a "direct supervision area" shall receive a minimum of forty (40) hours of preservice training, and shall receive a minimum of forty (40) hours annual in-service training provided by the Department of Corrections and a regional or local basis.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall have written policy and procedures that promote the physical fitness of staff.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include but not be limited to the following:

(a) Employees shall not:

1. Exchange personal gifts or favors with inmates, their family, or friends;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;
4. Violate or disobey established rules, regulations, or lawful orders from a superior;
5. Discriminate against any inmate on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject inmates to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate inmates;
9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of staff members or inmates in the presence of inmates;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with inmates; and
15. Inquire about, disclose, or discuss details of an inmate's crime other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, regulations, and lawful orders from superiors;
 2. Treat all inmates in a fair, impartial manner; and
 3. Report all violations of the code of ethics to the jailer.
- (3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

ADMINISTRATIVE REGISTER - 1961

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.011, 441.012, and 441.013, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:

- (1) Site selection.
- (2) Probable need as it relates to capacity and types of inmates to be housed.
- (3) Sources of financing for constructing.
- (4) Laws and regulations relating to treatment of inmates.
- (5) Laws and regulations relating to facilities for inmates.
- (6) Sources of revenue for operations of the jail.
- (7) Probable cost for operation of the jail.
- (8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No jail shall be built without site acceptance by the Department of Corrections. The following criteria shall be considered in site selection including but not limited to:

- (1) Size.
- (2) Proximity of courts.
- (3) Proximity of community resources.
- (4) Availability of public transportation.
- (5) Environmental health.
- (6) Adequate parking.
- (7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Department of Corrections for review and approval as follows:

- (1) Programming phase. This submission shall show:
 - (a) Evaluation of existing facility;
 - (b) Population analysis;
 - (c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Jails;
 - (d) Staffing analysis;
 - (e) Cost analysis to include construction and operation costs;
 - (f) Financing alternatives, if applicable;
 - (g) A design-construction time schedule;
 - (h) Summary and recommendations; and
 - (i) This phase is submitted on major renovation or new construction only and for information review purposes.
- (2) Schematic phase.
 - (a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
 - (b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;
 - (c) Documentation of site as to:

1. Size;
2. Proximity to courts;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawings of all exterior walls; and
(f) Schematic cost estimate to include revised construction and operation costs;

(g) A revised design-construction time schedule.

(3) Design development phase.

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for all materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) Construction document phase.

(a) Revised design development construction drawings following review by all applicable agencies.

(b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections.

(c) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) Contract administration.

(a) Signed copies of all contracts for construction, financing and bonding;

(b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders must be submitted to the Department of Corrections for review and approval.

(6) The Department of Corrections will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (5)(d) of this section has been approved.

(7) Depending on the site of the proposed constructions, renovation or addition the Department of Corrections may combine two (2) or more phases as outlined above for review and approval.

(8) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and/or graphic addenda, field orders and change orders. In addition a set of accurate as-built drawings shall be submitted to Corrections within sixty (60) days of occupancy of the facility.

Section 5. Waiver of Compliance. (1) The Department of Corrections may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance is to be achieved in a manner other than that

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which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections. The written request shall include the following information:

- (a) Citation of the specific standard involved;
- (b) Identification and description of the specific difficulties involved in meeting strict compliance;
- (c) Description of the alternative proposed; and
- (d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Department of Corrections, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(a) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance, an adult inmate entrance, and a service entrance. The Department of Corrections may permit these entrances to be combined.

1. Public entrance. The purpose of this entrance is to divert the general public from the security area of the jail and from contact with incoming inmates. This area will be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room by means of direct surveillance or closed circuit T.V.

b. Meet the requirements for handicapped persons.

2. Service entrance. The purpose of this entrance is to provide access to service vehicles and delivery trucks with minimum security risks. It may contain a loading dock and shall be located in close proximity to storage rooms and the kitchen area.

3. Adult inmate entrance. The purpose of this entrance is to provide secure and private access to the jail for incoming inmates. This entrance must be serviced by a drive-in sallyport or a secure walk-in vestibule and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstacles.

d. Be protected from inclement weather.

e. Have a security penal type pistol locker in sallyport or vestibule.

f. All hardware and equipment shall be of approved penal type.

(b) Exits. All openings in the security perimeter shall be secured with penal devices. Fire exits, when possible, shall open into controlled, secured courts and exercise areas.

(c) Administrative areas. This area will provide space outside the secured area of the jail to house the administrative offices and to accommodate the public. This shall contain the following:

1. Waiting area. To provide space for the general public which is protected from inclement weather. This area shall have toilet facilities and drinking fountains, in new jails.

2. Visiting area, public side. This area shall provide for private communication with inmates and be located in close proximity to the waiting area.

3. Office area. This area shall be of sufficient space to house the administrative function of the jail.

4. Entrance to security area. The purpose is to provide secure

access to the security area, be penal type and access shall be controlled from the security area.

(d) Security areas. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas: Booking area. The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

1. Close proximity to a secure area for storage of inmate personal property.

2. Close proximity to an area for photography and fingerprinting.

3. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.

4. Close proximity to temporary holding and detoxification cells.

5. Located in a manner to be monitored by a control room.

(e) Detoxification area. The purpose is to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.

2. A minimum of eight (8) feet ceiling height.

3. One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate.

4. A penal commode/lavatory and a flush floor drain controlled from outside the cell.

5. A bubble-type drinking fountain.

6. All fixtures and equipment shall be penal type.

7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.

8. All horizontal surfaces (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain.

9. All protruding corners (except at ceiling) shall be covered.

10. Ceiling, walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction.

11. Each detox cell shall have sufficient penal type fixture(s) capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.

(f) Holding areas. The purpose of these areas are for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion/holding.

1. Design features for secure holding shall include:

a. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.

b. Eight (8) feet ceiling height.

c. One (1) penal type bench per rated capacity.

d. All equipment shall be penal type.

e. One (1) penal type lavatory/commode.

f. One (1) penal type light fixture capable of providing twenty (20) foot-candles of light.

g. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.

2. If a diversion/holding area is provided, features and requirements include:

a. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;

b. Total rated capacity not to exceed twenty-four (24) persons;

c. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;

d. At least one (1) water fountain shall be located in area;

e. Phone system shall be available for use by inmates;

f. Construction shall be fire-rated with penal hardware, windows and door;

g. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire rated;

h. Unobstructed view into area shall be provided;

i. Areas shall have constant in-person surveillance;

j. If inmates housed in area during normal meal times, they shall

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be fed. Meals do not have to be hot; and

k. Policy and procedure shall set forth criteria for placement of inmates in this area.

(g) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment. If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment. Design features shall include:

1. Minimum dimension shall be eight (8) feet.
2. Minimum ceiling height shall be eight (8) feet.
3. One (1) lavatory or counter sink.
4. One (1) work counter.
5. Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.

6. One (1) or more medical examination tables.
7. Electrical power outlets shall be provided in this room.
8. All ceilings, walls, and floors shall be approved masonry, concrete or steel construction.

(h) Visiting area, inmate side. The purpose is to provide secure and private visitation for the inmates. All equipment and furnishings shall be of penal type and permanently attached.

(i) Conference room. The purpose of this room is to provide space for confidential conferences between inmates and lawyers, probation officers, clergy, etc. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.
2. Walls, floors, and ceilings shall be of approved masonry, concrete or steel construction.
3. Furnishings shall be noncombustible/nontoxic as approved by Corrections.

(j) Multipurpose room. The purpose of this area is to provide space for assembly of inmates for specific program activities. This area shall allow at least twenty-five (25) square feet per inmate in an area with a minimum of 250 square feet. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.
2. Walls, floor, and deck shall be of approved masonry, concrete or steel construction.
3. Furnishings shall be noncombustible/nontoxic as approved by Corrections.

4. Ceiling shall be of approved constructions.

(k) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per inmate in an area with a minimum of 385 square feet.

(l) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

1. Compliance with standards of the State Food Service Code, 902 KAR 45:005.
2. Commercial type stoves and refrigeration units.
3. Doors and windows will be penal type.
4. Walls, floors, and ceilings will be approved fire-rated masonry, concrete or steel construction.

(m) Control room. The purpose of this area is to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area will be the hub for operations within the jail. Design features shall include:

1. Doors and windows shall be of penal type.
2. Walls, floors, and ceiling shall be approved masonry, concrete or steel construction.
3. Audio and video monitors shall be located in this area.
4. Gauges, indicators, and alarms shall be located in this area.
5. Central control panels shall be located in this area.
6. This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

- (n) When jail staff are not within normal hearing distance of

inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(o) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(p) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

2. Providing ventilation to meet air exchange as required in the state health codes.

3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit).

4. Shall be of approved masonry, concrete or steel construction.

5. All furnishings and equipment shall be penal type and permanently attached.

6. Each confinement area shall have floor drains to service each living area.

7. Be equipped with an approved securable food pass.

8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(q) Direct supervision areas. The purpose of this area is to provide suitable living conditions for inmates lodged in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail staff. Jails which utilize the "direct supervision area" concept shall have a sufficient number of secure cells or dormitories, as approved by the Department of Corrections, in order to separate inmates who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter.

1. Direct supervision area design features shall include:

- a. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

- b. Providing ventilation to meet air exchange as required in the state health codes.

- c. Providing temperature ranges within comfort zones (sixty-five (65) degree Fahrenheit - eighty-five (85) degrees Fahrenheit).

- d. Shall be of approved masonry, or concrete construction.

- e. All furnishings and equipment shall be commercial type.

- f. Electrical outlets shall be ground-faulted or have ground-fault circuit breakers.

- g. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) commercial type bunks.

- h. Inmates shall not be detained in the cells for longer period than twelve (12) hours.

2. Each cell shall contain:

- a. Bunk, table, seat, and personal property storage area.

- b. A light fixture with control accessible to the inmate.

- c. Commode, lavatory, and drinking fountain.

- d. Locks used to confine inmates in the cells shall have the capability of gang release.

3. Each dayroom area shall include:

- a. Thirty-five (35) square feet per inmate.

- b. One (1) commode per eight (8) inmates.

- c. One (1) lavatory per eight (8) inmates.

- d. One (1) drinking fountain per sixteen (16) inmates.

- e. One (1) shower per sixteen (16) inmates.

- f. Tables and chairs per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.

- g. Phone system shall be available for use by inmate.

- h. Design features shall include items which aid in the acoustical

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quality of the area.

i. Jail staff shall be in direct supervision of the area at all times.

(r) All cells and housing areas design features shall include:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area. Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

2. Depending on the size of jail one (1) or more isolation single-man cells shall be provided.

3. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

4. Each cell shall contain:

a. A penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

b. A penal type light fixture with controls nonaccessible to inmates unless it has staff override.

5. The jail shall provide living space for low security inmates including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they must include:

a. Fifty (50) feet per inmate.

b. One (1) commode/lavatory/drinking fountain per eight (8) inmates.

c. One (1) shower per sixteen (16) inmates.

d. Sufficient tables and benches to handle the number of inmates housed in the dorm.

e. One (1) penal type storage area for personal property per inmate.

f. One (1) penal type bunk secured to the floor or wall per inmate.

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per inmate.

b. One (1) commode per eight (8) inmates.

c. One (1) lavatory per eight (8) inmates.

d. One (1) drinking fountain per sixteen (16) inmates.

e. One (1) shower per sixteen (16) inmates.

f. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.

(2) The provisions of this section shall be effective as of January 1, 1983.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Department of Corrections shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

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(3) These policies and procedures shall include but not be limited to:

- (a) Inmate rules and regulations;
- (b) Staffing;
- (c) Searches of inmate and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Inmate head counts;
- (g) Surveillance checks;
- (h) Emergency situations; and
- (i) Jail schedule;
- (j) Administering medication.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of inmates:

- (a) Suicidal;
- (b) Assaultive;
- (c) Escape risk;
- (d) Mentally or emotionally disturbed;
- (e) Inmates in segregation;
- (f) Inmates in detox cell;
- (g) Juveniles, if housed in the jail; and
- (h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all jail areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances as determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) Unless under the direct supervision of staff, an inmate shall not be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.

(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) No inmate placed in physical restraints shall be left unattended.

(14) All jails shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No inmate shall be permitted to handle keys used to operate jail security locks.

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.

(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices such as electrical switches or levers.

(i) Locks to outside exits shall be keyed differently from interior locks. Locks to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) At no time shall a trusty have access to or control of weapons.

(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.

(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

(1) Use of force.

(2) Disciplinary actions.

(3) Medical or mental health treatment.

(4) Feeding schedule and menus.

(5) Extraordinary occurrences.

(a) Fires.

(b) Assaults.

(c) Suicide or attempted suicide.

(d) Escape or attempted escape.

(6) Inmate vandalism.

(a) Destruction of jail property.

(b) Flooding of plumbing fixtures.

(7) Staff roster for each shift.

(8) Telephone log of initial phone call(s).

(9) Visitors log.

(10) Fire planning sessions.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office

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Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
 - (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:
- TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

- (1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
- (2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.
- (3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.
- (4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0
Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:070. Safety; emergency procedures.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth safety and emergency procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:

- (a) Provision for fire emergency planning sessions for staff at least quarterly.
- (b) Written documentation of fire planning sessions.
- (c) A fire safety inspection by the Department of Corrections at least once a year.
- (d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.
- (e) Smoking restrictions and regulations.
- (f) Written evacuation plan coordinated with local fire officials.
- (2) Each jail shall have written policy and procedures for emergency situations including but not limited to:
 - (a) Escapes.
 - (b) Taking of hostages.
 - (c) Riots.
 - (d) Food poisoning.
 - (e) Civil disturbances in the community.
 - (f) Natural disasters.
 - (g) Suicides.
 - (h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.

(2) Each jail shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where an inmate may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and be operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

(6) Each "direct supervision area" shall have an approved fire-suppression system.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
 - (a) Direct and indirect costs or savings to those affected:

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1. First year: None
2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

- (1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
- (2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.
- (3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.
- (4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to

provide proper sanitation and hygiene in jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail.

(b) A schedule for inspections by the jailer.

(c) A schedule for trash and garbage removal.

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh and purified air circulating within inmate living and activity areas.

(5) The jail shall furnish clean sanitized bedding to inmates except in holding areas and unless it is determined to be detrimental to a particular inmate. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress.

(b) One (1) mattress cover.

(c) One (1) blanket, when conditions require.

(d) One (1) sheet.

(e) One (1) pillow.

(f) One (1) pillowcase.

(6) Inmate bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each inmate shall be issued a clean towel upon admission to an inmate living area. Towels shall be laundered every fourth day.

(8) All floors, toilets, and sinks in the jail shall be washed daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) All inmates assigned to inmate living areas shall be issued the following hygienic items:

(a) Soap.

(b) Toothbrush.

(c) Toothpaste.

(d) Toilet paper.

(e) Female sanitary supplies (where applicable).

Indigent inmates shall be furnished these items by the jail.

(11) All inmates shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. No inmate shall be forced to shave except for medical purposes and under the specific orders of the medical authority.

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all inmates. Inmates shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.

(13) All inmates shall be provided shower facilities within twenty-four (24) hours of admission. Inmates shall be permitted to shower daily.

(14) All inmates in the jail shall be provided with hot and cold running water in showers and lavatories.

(15) As required in KRS 441.064, the jail shall be inspected by the Department of Corrections biannually.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General

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Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
- (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

501 KAR 10:090. Medical services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the proper delivery of medical services in jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(5) Inmates shall not perform any medical functions within the jail.

(6) Inmates shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(7) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(8) Medical screening shall be performed by the receiving officer on all inmates upon their admission to the jail and before their placement in inmate living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behavioral observation, state of consciousness and mental status.

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of inmates to qualified medical personnel on an emergency basis.

(9) Sick call conducted by the medical authority shall be available to each inmate as follows:

(a) Facilities with fewer than 100 inmates hold sick call one (1) day per week, at a minimum.

(b) Facilities with 100 to 300 inmates hold sick call three (3) days per week, at a minimum.

(c) Facilities with more than 300 inmates hold sick call four (4) days per week, at a minimum.

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.

(11) At least one (1) jail staff member per shift shall be trained and certified to perform approved CPR (cardiopulmonary resuscitation), (January 1, 1984)

(12) Emergency medical, dental, and psychiatric care shall be available to all inmates commensurate with the level of such care available to the community.

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(13) Medical research shall not be permitted on any inmate in the jail.

(14) Access to the inmate's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the jail.

(15) All examinations, treatments, and procedures have the informed consent of the parent, guardian, or legal custodian shall apply when required by law.

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all inmates who die while in the custody of the jailer.

(17) The jailer shall have written delousing procedures.

(18) All jail staff who administer medications to inmates shall be trained in the proper procedures as outlined in the policy and procedures manual.

(19) The jail shall have first aid kits available at all times.

(20) An inmate who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement jail which can provide the treatment or may be moved to a hospital.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of

the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:100. Food services.

RELATES TO: KRS 441.057

STATUTORY AUTHORITY: KRS 441.057

NECESSITY AND FUNCTION: KRS 441.057 requires the Department of Corrections to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for proper food services in local facilities.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile inmates shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Inmates shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) A staff member shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) No food shall be prepared in inmate living areas, however, canteen food items may be stored in reasonable amounts.

ADMINISTRATIVE REGISTER - 1970

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
 - (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

- (1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
- (2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.
- (3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.
- (4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: Most jails will not experience any changes to

their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:110. Classification.

RELATES TO: KRS 441.057

STATUTORY AUTHORITY: KRS 441.057

NECESSITY AND FUNCTION: KRS 441.057 requires the Department of Corrections to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for the classification of inmates.

Section 1. Procedure. (1) Each jail shall develop an appropriate inmate classification system, which shall be included in the jail's written policy and procedure manual.

(2) The inmate classification system shall provide for the separation of the following categories of inmates.

- (a) Male and female inmates;
- (b) Juvenile and adult inmates. If a juvenile is housed in the jail, he/she shall be housed as a juvenile regardless of his criminal status. Such offenders, as these confined for traffic offenses and those whose rights as a juvenile have been waived, will be housed as juveniles;
- (c) Mental inquest detainees and other inmates;
- (d) Mentally ill or mentally retarded inmates and other inmates;
- (e) Chemically incapacitated inmates and other inmates;
- (f) Inmates with a tendency to harm others, be harmed by others, or requiring administrative segregation and other inmates;
- (g) Inmates with communicable disease and other inmates.
- (3) The criteria to be used in the classification of other inmate categories shall be as follows:
 - (a) Sentenced or unsentenced status.
 - (b) Felons and misdemeanants.
 - (c) Noncriminal and criminal status such as traffic violators, nonsupport cases or civil contempt.
 - (d) Community custody inmates such as work-release, education-release, weekenders.
 - (e) Trusties. All inmates receiving trusty status shall be selected by the jailer or his designee based upon criteria including but not limited to:

1. The nature of the inmate's offense and sentence;
2. Previous escape attempts; and
3. The inmate's "day-to-day" behavior.
- (4) An inmate's classification shall be changed to reflect changes in the inmate's status including but not limited to the following:
 1. Court appearance by the inmate;
 2. Disciplinary hearing and action; and
 3. Reevaluation of the inmate's physical, emotional, or mental condition.
- (5) The inmate classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

ADMINISTRATIVE REGISTER - 1971

Agency Contact Person: John T. Damron

- (1) Type and number of entities affected: County jails.
- (a) Direct and indirect costs or savings to those affected:
 1. First year: None
 2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements: No change.
 - (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 department's operational budget.
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:120. Admission; release.

RELATES TO: KRS 441.057

STATUTORY AUTHORITY: KRS 441.057

NECESSITY AND FUNCTION: KRS 441.057 requires the Department of Corrections to promulgate regulations establishing minimum standards for facilities. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) Any inmate in need of emergency medical attention shall not be admitted to the jail until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the jail staff member on duty.

(2) The jail staff shall assure that each inmate is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

- (a) Time and date of commitment;
- (b) Name, alias, nickname;
- (c) Official charge - cite five (5) digit UOR number;
- (d) Authority ordering commitment;
- (e) Unit of government to be billed;
- (f) Signature and title of arresting or committing officer;
- (g) Date of birth;
- (h) Race;
- (i) Sex;
- (j) Height and weight;
- (k) Current or last known address;
- (l) Telephone number;
- (m) Marital status;
- (n) Spouse or next of kin;
- (o) Emergency contact (name, relation, address, telephone number);
- (p) Employer, place of employment, telephone number;
- (q) Social Security number;
- (r) Health status (including current medications, known allergies, diet or other special medical needs);
- (s) Blood type, if known;
- (t) The name of any known person in the jail who might be a threat to the arrestee; and
- (u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).

(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate, witnessed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall be done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(5) Each jail shall develop written policies and procedures.

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specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property which is taken from the inmate upon admission shall be listed by complete description on a receipt form, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate and kept for the jail record.

(b) If the inmate is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each inmate.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

(b) Rules of inmate conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and

(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Department of Corrections personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:130. Inmate programs; services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for inmate programs and services.

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Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced inmates who perform work as authorized by KRS 441.068 may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure which encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

Section 3. Library Services. Where resources are available in the community, library services may be made available to all inmates.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights to inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week when weather permits. Inmates who pose a threat to the safety and security of the jail may be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local correctional system.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

DEPARTMENT OF CORRECTIONS Division of Local Facilities

501 KAR 10:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.057 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to ensure the protection of inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of inmate rights which shall include but not be limited to:

(a) Access to courts.

(b) Access to attorney.

(c) Mail.

(d) Telephone.

(e) Grievances.

(f) Search and seizure.

(g) Disciplinary procedure.

(h) Racial segregation.

(i) Medical care.

(j) Mental health care (if possible).

(k) Religion.

The statement of inmate rights shall be posted in a conspicuous

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place in the booking and inmate living areas of the jail.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process.

(3) The jailer shall ensure the right of inmates to have confidential access to their attorney and their authorized representative.

(4) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include but not be limited to:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.

(b) At least one (1) visit per week per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) Visits shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit inmates.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to register, for refusal to consent to search or for any violation.

(7) Inmates shall not be restricted in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security.

(b) The visitor has a past history of disruptive conduct at the jail.

(c) The visitor is under the influence of alcohol or drugs.

(d) The visitor refuses to submit to search or show proper identification.

(e) The inmate refuses the visit.

(8) The jailer shall not listen to visitor's conversations but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail.

(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence.

(3) Incoming mail may be inspected for contraband items prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the inmate.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each inmate to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the inmate or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limits necessary to maintain jail order and security.

(2) Inmates shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) Inmates shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written inmate grievance procedure which shall be available to all inmates. These procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints.

(2) Equal access to all inmates.

(3) Guarantees against reprisal.

(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of inmates and staff, and security of the jail.

(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to such extent as possible.

(3) All strip searches shall be performed by a staff person of the same sex as the inmate.

Section 8. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each inmate shall be afforded access to necessary medical care.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 28, 1992

FILED WITH LRC: January 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron and Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

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

1. First year: None

2. Continuing costs or savings: Savings may be realized for some counties constructing new jails.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(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 department's operational budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Annual inspection reports are already submitted to each county.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are required by statute.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

(2) State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

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(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: Most jails will not experience any changes to their budget as a result of these revisions. Some jails which serve as holdovers may realize some savings when renovating the facility.

TRANSPORTATION CABINET Department of Highways Division of Traffic

603 KAR 3:070. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 CFR Part 750

NECESSITY AND FUNCTION: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation.

Section 1. Definitions. (1) "Advertising device" or "device" means as defined in KRS 177.830(5).

(2) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device:

- (a) Has not displayed any advertising matter;
- (b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial area" which is applied to interstate and parkway highways only means:

(a) The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or

(b) The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit.

(9) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(10) "Comprehensively zoned," which is applied to FAP highways only, means that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(11) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12) "Destroyed" means that the advertising device has sustained damage by any means in excess of sixty (60) percent of the depreciated replacement cost. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

(a) Adding guys or struts;

(b) Adding new supports or poles by splicing or attaching to existing supports;

(c) Adding separate new auxiliary supports or poles;

(d) Adding new or replacement peripheral or integral structural bracing or framing; or

(e) Adding new or replacement panels or facings.

(13) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(14) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3).

(15) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(16) "Interstate highway" means as defined in KRS 177.830(2).

(17) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(18) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(19) "Nonbillboard off-premise advertising device," which is applicable to FAP highways only, means an advertising device not located on the property which it is advertising and limited to advertising for a church or civic club which includes any nationally, regionally

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or locally known religious or nonprofit organization.

(20) "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

- (a) Zoning changes;
- (b) Highway relocation;
- (c) Highway reclassification; or
- (d) Changes in restrictions on size, spacing or distance.

(21) "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included in these signs are:

- (a) Signs denoting the location of underground utilities;
- (b) Signs required by federal, state or local governments to delineate boundaries of reservations, parks or districts;
- (c) Street signs or traffic control signs; or
- (d) Signs required by state law.

(22) "On-premise advertising device" means an advertising device that contains a message relating to an activity or the sale of a product within the boundaries of the property on which the device is located.

(23) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to advertising devices, parkways shall be considered the equivalent of interstate highways.

(24) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(25) "Primary business or activity" means that the sale of one (1) product or business activity which takes precedence over any or all other product sales or business activities.

(26) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the state-owned highway right-of-way of the interstate, parkway and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet from the right-of-way of all interstate, parkway and FAP highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(27) "Public service sign," which is applicable to FAP highways only, means a sign erected or located on a school bus shelter.

(28) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition shall apply to signs on school bus shelters on FAP highways only.

(29) "Routine change of message" means the message change on an advertising device is from one (1) advertised product or activity to another. This includes the lamination or preparation of panels inside a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(30) "Routine maintenance" means:

- (a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;
- (b) The routine change of message; and
- (c) The fixing of existing panels or facings at a location other than that of the advertising device;
- (d) Routine maintenance shall not mean:
 - 1. Adding guys or struts for the stabilization of the device or substantially changing the device; or
 - 2. Replacement of panels or facings or the addition of new panels or facings.

(31) "Traveled way" means the portion of a roadway dedicated to

the movement of vehicles, exclusive of shoulders.

(32) "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(33) "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(34) "Urban area" means as defined in KRS 177.830(10).

(35) "Visible" means capable of being seen whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected with the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except directional or other official signs or signals erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

- (a) Directional and other official devices including signs or devices placed by the Department of Highways;
- (b) Signs or devices, limited in size to two (2) square feet, denoting the location of underground utilities; or
- (c) Signs, limited in size to 150 square feet, erected by federal, state or local governments to delineate boundaries of reservations, parks or districts.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to advertising devices on interstate, parkway and FAP highways.

(1) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in protected areas:

- (a) An advertising device which is advertising an activity that is illegal under state or federal law;
 - (b) An obsolete advertising device;
 - (c) An advertising device that is not clean and in good repair;
 - (d) An advertising device that is not securely affixed to a substantial structure;
 - (e) An advertising device illuminated by other than white lights;
 - (f) An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;
 - (g) An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of official signs or approaching or merging traffic;
 - (h) An advertising device which contains, includes or is illuminated by any flashing, intermittent or moving lights, except on-premise devices providing public service information including time, date, temperature or weather;
 - (i) An advertising device which uses lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle;
 - (j) An advertising device which moves or has any animated or moving parts;
 - (k) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;
 - (l) An advertising device exceeding 1,250 square feet in area, including border and trim but excluding supports;
 - (m) An advertising device erected upon or overhanging the right-of-way of any highway; or
 - (n) An advertising device which interferes with any official sign, signal or traffic control device.
- (2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway or FAP highway shall be allowed in protected areas.

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(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS Chapter 177 shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming advertising device may continue to exist until just compensation has been paid to the owner, only so long as it is:

- (a) Not destroyed, abandoned or discontinued;
- (b) Subjected to only routine maintenance;
- (c) In conformance with local zoning or sign or building restrictions at the time of the erection; and
- (d) In compliance with the provisions of subsection (1) of this section.

(e) Performance of other than routine maintenance on a nonconforming device shall cause it to lose its status and to be classified as illegal.

(5) Vandalized nonconforming device.

(a) The owner of a nonconforming advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

- 1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible;
- 2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;
- 3. Ownership of the advertising device;
- 4. Dimensions of the destroyed advertising device;
- 5. Material used in erection of the destroyed advertising device;
- 6. Durability of the new device;
- 7. Stanchion type; and
- 8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(6) Required measuring methods.

(a) To establish protected areas, distances from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) To measure distances for the determination of spacing for advertising devices, a line shall be drawn perpendicular from each advertising device to the centerline of the highway to embrace the greatest longitude along the centerline of the highway.

(c)1. V-shaped or back-to-back type billboard advertising devices shall not be more than fifteen (15) feet apart at the nearest point between the two (2) billboards and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) billboards shall not be greater than forty-five (45) degrees.

(d) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(7) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) V-shaped or back-to-back billboard advertising devices shall be considered as specified in KRS 177.863(2)(b);

(c) A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

(d)1. The issuance of billboard permits as they relate to the required spacing between the billboards shall be determined on a "first-come, first-served" basis.

2. Proof of lease or ownership of a site shall accompany the application for a permit submitted to the Department of Highways pursuant to Section 6 of this administrative regulation.

3. An approved advertising device application shall only be valid for one (1) year. If the device has not been constructed in that year, the applicant shall apply for renewal of his approved application prior to erecting the advertising device.

(e) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(f) A billboard advertising device may only be illuminated by white lights.

(8) Criteria for on-premise advertising devices. The following criteria are applicable to all on-premise advertising devices located in a protected area:

(a) An on-premise advertising device shall have the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet of the advertised activity boundary lines.

(b) Only one (1) on-premise device may be located at a distance greater than fifty (50) feet from the activity boundary line.

(c) An on-premise advertising device shall not exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.

(d)1. An on-premise advertising device shall not be located more than 400 feet, measured within the property boundary, from the advertised activity.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) Only the following types of on-premise advertising devices shall be located so that they are visible from the main traveled way of an interstate, parkway or FAP highway:

1. Those indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. Those showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. Those advertising the sale or leasing of the property upon which the advertising device is located;

5. Those setting forth the advertisement of an activity or sale of products on the property where the advertising device is located; or

6. Signs with a maximum area of eight (8) square feet noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall advertise only the activity or business conducted upon the property on which it is located.

(h) Brand names shall not be advertised in an on-premise advertising device when the sale of an item with the brand name is incidental to the primary activity or business.

(i) A marquee type on-premise advertising device, such as a

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device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.

(j) Industrial park type on-premise advertising devices which shall be limited in area to 150 square feet may contain only the following messages:

1. The name of the industrial park;
2. The city or county associated with the industrial park; or
3. The name of the individual business or industries located in the industrial park.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) Billboard advertising devices may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercial or industrial area and if the advertising device complies with the provisions of KRS Chapter 177 and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet is visible from the interstate or parkway highway at any one time.

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary Highways. (1) Billboard advertising devices on FAP highways. Billboard advertising devices may be permitted in protected areas of FAP highways if they are located in unzoned commercial or industrial areas or commercial or industrial zones and if the devices comply with applicable state, county or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an FAP highway as long as there is a commercial or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of a FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet from the right-of-way of the FAP highway.

(d)1. Minimum spacing between billboard advertising devices in unzoned commercial or industrial areas shall be 300 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet within incorporated municipalities which do not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near FAP highways, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet in each direction.

(3) Nonbillboard off-premise advertising devices on FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of any FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device relating to a particular church or civic organization may be erected in each direction of travel on any one (1) FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet.

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) Church or civic club type nonbillboard advertising devices which shall be limited in area to eight (8) square feet may contain only the following messages:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet in area.

(4) Public service sign criteria. Public service signs may be allowed if they conform to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation is required for on-premise advertising devices on FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

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(a) Application for an advertising device permit shall be made on form TC 99-31. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. The application form is hereby incorporated by reference as a part of this administrative regulation.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the lease, if applicable; and
6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph or drawing.

(c) The applicant shall submit three (3) copies of all required documentation.

(d) Copies of this application form may be viewed, copied or obtained from the Department of Highways, Division of Traffic, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Division of Traffic is (502)564-3020. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner of the advertising within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall take legal action to have the noncompliant advertising device removed or otherwise brought into compliance.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;
2. It receives more than routine maintenance; or
3. It does not comply with the provisions of Section 3(1) of this administrative regulation.

Section 9. Scenic Byways. On any highway designated by the Transportation Cabinet or the Federal Highway Administration as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic, regardless of the highway classification.

Section 10. Repeal of Regulation. 603 KAR 3:060, Advertising devices on interstate, parkway and federal-aid primary highways is repealed.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on February 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Room 1003 on the Tenth Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by February 18, 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 February 18, 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 February 18, 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 owners of outdoor advertising devices in Kentucky.

(a) Direct and indirect costs or savings to those affected: Even though this is a new administrative regulation, it only makes one policy change from 603 KAR 3:060. It is now possible for a noncon-

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forming advertising device destroyed by an act of vandalism to be rebuilt. That change can mean a savings of thousands of dollars for those few owners who have an advertising device destroyed by vandals.

1. First year: \$10,000 since there is one nonconforming billboard destroyed by vandals which can now be rebuilt.

2. Continuing cost or savings: Will vary depending on the number of nonconforming billboards destroyed by vandals. Each year the number of nonconforming billboards is diminished and ultimately there will be none.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None as a result of this change.

(b) Reporting and paperwork requirements: Owners whose nonconforming billboard has been destroyed by vandals will have to apply to the Department of Highways to reconstruct the billboard. They will have to show in the application that the replacement billboard will be as close to the other as possible.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: With this one policy change, the Department of Highways will ultimately have to purchase nonconforming billboards which are destroyed by vandals. At the present time, if one is destroyed, it cannot be reconstructed.

1. First year: None

2. Continuing costs or savings: It is impossible to know how many nonconforming billboards might be destroyed by vandals. However, the cost to the Department of Highways will ultimately be in excess of \$50,000 per billboard.

3. Additional factors increasing or decreasing costs: None

(b) Reporting or paperwork requirements: Review and evaluation of any applications received.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: It was brought to the attention of the Transportation Cabinet that the Federal Highway Administration's regulations allow the reconstruction of a nonconforming billboard destroyed by vandals even in a state with a bonus agreement in place. When the federal government confirmed this, the Transportation Cabinet had no choice because of KRS Chapter to change the policy so that it is now no stricter than the federal mandate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. More stringent standards are applied along interstate highways and parkways than along FAP routes. In addition, less stringent standards are applied to on-premise advertising devices than to off-premise advertising devices.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 750 and the Bonus Agreement executed by the Federal Highway Administration and the Kentucky Department of Highways.

2. State compliance standards. Outdoor advertising devices are controlled on the interstate highways, parkways and federal-aid primary highways. Interstates and parkways are treated the same with more control imposed on those highways.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways and federal-aid primary highways. The parkways are required to be treated as federal-aid primary highways and less control is required in "Cotton Areas" on interstate highways. Cotton Areas are those areas with a commercial or industrial use and where the state owned the highway right-of-way

prior to 1956.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate operating here. The basic mandate is the federal Highway Beautification Act governed by 23 CFR Part 750. However, Kentucky is one of the states which voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 660 feet of interstate and parkway highways. Kentucky received over \$2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds plus others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in "Cotton Areas". This would require an act of the General Assembly as well as requiring the Commonwealth to pay back much federal money received under the bonus agreement.

EDUCATION AND HUMANITIES CABINET

Department of Education

Bureau of Learning Results Services

703 KAR 4:050. Operational standards defining ratios for the major classifications of classified employees.

RELATES TO: 1992 Acts, Ch. 462 - General Assembly Budget Memorandum

STATUTORY AUTHORITY: KRS 156.070, 1992 Acts, Ch. 462 - General Assembly Budget Memorandum

NECESSITY AND FUNCTION: The 1992 General Assembly Budget Memorandum directed the State Board for Elementary and Secondary Education to adopt operational standards under KRS 158.685 to define ratios for the major classifications of classified employees. This administrative regulation sets forth formulas to calculate staffing for three (3) classifications of classified personnel in the local school districts including custodians, food service staff, and secretaries.

Section 1. (1) The number of full-time equivalent custodians in the school district shall be computed according to the following formula:

$$\text{Custodians} = .75 ((.03 \times \text{CS}) + (.001 \times \text{SE}) + (.045 \times \text{SF}))$$

where:

- (a) CS equals total certified staff;
- (b) SE equals school enrollment; and
- (c) SF equals square feet/1,000.

(2) The actual number of full-time equivalent custodial employees shall not exceed the number of custodians computed by this formula by more than ten (10) percent, unless other factors such as the age of the building, condition of the building, use of the building, safety and security reasons, and type of heating system indicate additional staff are justified.

Section 2. (1) The following school food service staffing guidelines shall be used to determine the maximum number of total labor hours that each school shall employ to produce the number of meal equivalents served:

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# of Meal Equivalents Served (ME's)	Meals Per Labor Hour (MPLH)	Total Labor Hours	Full-Time Equivalents (FTE's)
Up to 100	8	9-12	2.25-3
101-150	9	12-16	3-4
151-200	10-11	16-17	4-4.25
201-250	12	17-20	4.25-5
251-300	13	20-22	5-5.50
301-400	14	22-29	5.50-7.25
401-500	14	29-35	7.25-8.75
501-600	15	35-40	8.75-10
601-700	16	40-43	10-10.75
701-800	17	43-47	10.75-11.75
801-900	18	47-51	11.75-12.75
901-1,200	19	52-80	13.00-20.00
1,201-1,500	19	63-100	15.75-25.00
1,501-1,800	19	79-120	19.75-30.00
1,801-2,100	19	95-140	23.75-35.00

KEY:

1. ME's: 2 breakfasts = 1 ME; 1 lunch = 1 ME; \$2 of Misc. Ala Carte = 1 ME
2. Recommended meals per labor hour based on meal equivalents served
3. Total labor hours = hours devoted to preparation, serving and cleanup employed in the kitchen
4. FTE's = 4 hours per day; TOTAL LABOR HOURS - by 4

(2)(a) The maximum number of food service employees for each operating kitchen in the district shall be computed from the guidelines in the chart in subsection (1) of this section.

(b) The FTE's derived in computing the formula for each operating kitchen shall be added together to determine the total number of FTE's for the district.

(3) The FTE's for the district shall not exceed the maximum authorized in the guidelines by more than ten (10) percent unless other factors, such as cafeteria capacity and equipment limitations, justify additional personnel.

Section 3. (1) The number of secretarial positions in the school district shall be computed according to the following formula: secretarial staff = (.076 x CS) + (.001 x SE), where CS equals total certified staff and SE equals the total student enrollment.

(2) The number of formula-generated secretarial staff employees shall not exceed the maximum authorized by this computation by more than ten (10) percent, unless special district circumstances justify additional personnel.

Section 4. (1) Local school districts shall be notified in writing by the Department of Education of these formulas which may be utilized as a guide to determine classified personnel staffing ratios in the district.

(2) Action may be taken against a local school district for noncompliance with these standards only if a comprehensive audit conducted by the Kentucky Department of Education pursuant to KRS 156.200, 156.210, or 157.780 reveals that the noncompliance substantially contributed to a pattern of serious mismanagement or operational inefficiency and ineffectiveness in the district.

THOMAS C. BOYSEN, Commissioner
JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: January 15, 1993

FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 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 February 19, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Gubser

(1) Type and number of entities affected: Potentially affects 176 local school districts.

(a) Direct and indirect costs or savings to those affected: Possible savings to school districts if standards utilized to reduce classified staff. Amount of savings unknown.

1. First year:

2. Continuing costs or savings:

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Budget memorandum mandates promulgation of regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Standards apply equally to all 176 school districts.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

804 KAR 4:310. Caterer's license.

RELATES TO: KRS 243.033

STATUTORY AUTHORITY: KRS 241.060, 243.033

NECESSITY AND FUNCTION: KRS 243.033 establishes a caterer's license and authorizes the board to set the necessary conditions and restrictions upon this license.

Section 1. License Issuance and Application Requirements. The distilled spirits administrator and the malt beverage administrator, jointly, may issue a license to a caterer for premises that contain a licensed and inspected commissary. A license may be issued only upon proper application and upon meeting the requirements set forth in KRS 243.020 to 243.670 for licenses to sell alcoholic beverages. Proof of a caterer's license issued by the Board of Health must accompany the license application.

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Section 2. Location of Storage Premises. The premises for storage of alcoholic beverages purchased under the caterer's license shall be separate from any retail package licensed premises or any retail drink licensed premises.

Section 3. Vehicle Identification. The name, license type and license number of the caterer shall be painted upon all vehicles used by the caterer to transport alcoholic beverages as per 804 KAR 8:050. The word "caterer" may not be abbreviated.

Section 4. Advertising. Advertising practices will conform to 804 KAR 1:100.

Section 5. Reporting of Functions. Caterer licensees shall submit a list of functions, both those catered since the last submission and those to be catered, including location, host, date and time, to the Department of Alcoholic Beverage Control on the first business day of each month.

D.B. GRUGIN, Commissioner

APPROVED BY AGENCY: January 13, 1993

FILED WITH LRC: January 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, February 24, 1993, at 1 p.m. in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, February 19, 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. If you do not wish to attend 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: Cynthia Whitehouse, Secretary to the Board, Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, (502) 564-4850. Contact Person: Donald B. Grugin, Commissioner.

REGULATORY IMPACT ANALYSIS

Contact person: Donald B. Grugin

(1) Type and number of entities affected: All caterers who are granted caterer's licenses, number unknown.

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

1. First year: None as a result of the regulation except the costs relative to the submission of the monthly report of events. The license cost is mandated by statute.

2. Continuing costs or savings: Same as #1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no factors and no effects.

(b) Reporting and paperwork requirements: 1) Monthly report of catered events; 2) Placement of license information on vehicles.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no indirect costs or savings to the ABC Department relative to this regulation.

1. First year: Same as (a).

2. Continuing costs or savings: Same as (a).

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Submission of monthly reports will necessitate minimal filing effort.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenue relative to this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since the statute required a regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy was found to be in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Is tiering applied? No. All applicants, and licensees, are similarly situated.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

806 KAR 13:120. Workers' compensation deductible policies.

RELATES TO: KRS 304.13-057, 304.13-400 to 304.13-420

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-410

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.13-410 provides that premium reductions for deductible workers' compensation insurance policies shall be calculated by the insurer in accordance with administrative regulations promulgated by the Commissioner of Insurance. This administrative regulation establishes the method of calculating premium reductions for workers' compensation insurance policies with deductibles.

Section 1. All insurers authorized to write workers' compensation insurance in Kentucky, when establishing the premium for a workers' compensation insurance policy with a deductible, shall use only the following deductibles: \$100, \$200, \$300, \$400, \$500, \$1,000, \$1,500, \$2,500, \$5,000, \$7,500, \$10,000.

Section 2. Application of this Administrative Regulation. (1) General.

(a) This administrative regulation applies to all insurers and licensed advisory organizations introducing or revising workers' compensation insurance deductible discounts or their application in Kentucky.

(b) A licensed advisory organization filing shall be self-contained and fully documented and shall not simply adopt the deductible plan or factors of another filing. An insurer may file a self-contained and fully documented deductible discount plan or it may choose to adopt the filed deductible plan and discounts of a licensed advisory organization or another insurer.

(2) Form of the deductible. The deductible discounts shall be determined by the multiplication of the deductible discount factors by the manual premiums. Separate deductible discounts for each deductible option shall be applicable for each hazard group defined in Appendix A.

(3) Experience and retrospective rating. Experience rating modifications shall be based on net losses and premiums, that is, losses net of deductibles and manual premiums less the deductible discount. The parameters of the experience rating plan shall also be adjusted to account for the deductible.

(4) Premium discount programs. For insurers that have a premium discount program based on the standard premium of a policy, the deductible discounts shall be applied prior to the application of premium discounts. The deductible discount is calculated by multiplying the discount factor by the manual premium. Premium

discounts then are calculated based on the standard premium, after deductibles.

Section 3. Methodology. (1) General. The deductible discount recognizes the reduction in losses (claim costs) borne by the insurer as a result of the insured's selection of a deductible. The most critical factor in the calculation is the loss elimination ratio ("LER"), which estimates the percentage of losses eliminated as a result of the deductible. Typically, two (2) types of adjustments are required to calculate the deductible discount from the LER:

(a) Recognition of factors which imply additional costs or savings associated with the deductible. These include credit risks that the insured will not repay the insurer for the deductible amount, changes in insurer cash flow, and higher levels of risk and possible antiselection. These types of factors are treated in this regulation as adjustments to the otherwise indicated LER.

(b) Recognition that many insurer operating expenses are not reduced by the introduction of deductibles. This consideration is treated in this administrative regulation through the deductible discount formula.

(2) Formula.

(a) The formula for pricing of deductibles in Kentucky shall be as follows:

$$p(x) = \frac{(1 - c - k - r + i)sd(x)E}{E + e + a}$$

where:

$p(x)$ - is the discount factor for a deductible of "x";

a - is loss adjustment expenses as a percentage of standard premiums after premium discounts (based on the insurer's filings);

c - is a factor to account for credit risk;

$d(x)$ - is the LER, which is defined as the percentage of losses eliminated by the deductible;

e - is the general expenses as a percentage of standard premium after premium discounts (based on the insurer's filings);

E - is the losses excluding loss adjustment expense as a percentage of standard premiums after premium discounts;

i - is a factor to account for the differences in investment income earned by the insurer between policies with deductible and those without a deductible;

k - is a factor to account for interest on the loan due to prepayment of losses below the deductible;

r - is a factor to account for the increased risk associated with deductible policies; and

s - is a factor to account for adverse selection.

(b) Loss adjustment expenses include allocated and unallocated expenses. General expenses include all expenses incurred other than loss adjustment expense, commissions, and other expenses that vary directly with the premium. Losses are expected losses for a policy with no deductible. The manual premium shall be used to calculate loss and expense ratios.

(c) Loss elimination ratio. The loss elimination ratio is determined by the size of loss distribution. To determine the size of loss distribution function it is necessary to analyze historical data. The analysis will determine a mathematical function or a discrete empirical distribution table.

1. Source of data. The data used in the analysis shall be relevant and appropriate. The ideal data for analysis is recent Kentucky-based number of claims and dollars of loss for medical and indemnity combined, by size of loss and hazard group on a per occurrence basis. The current National Council on Compensation Insurance Unit Statistical Plan incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays, may be used subject to the following adjustment:

a. The per claimant size of loss distribution shall be adjusted by

scaling the x axis by a factor of five (5) percent to ten (10) percent. That is, if $s(x)$ is the probability density function of the per claimant size of loss distribution and $f(x)$ is the probability density function of the per occurrence size of loss distribution, and the adjustment factor is selected as ten (10) percent, then $f(x)$ equals $s(x/1.1)$.

b. An alternative to this is to estimate mathematically the per occurrence size of loss distribution using a simulation method or by taking convolutions of the size of loss distribution. In either case, key inputs are the size of claims distribution and the distribution of the number of claimants per occurrence. Methodology shall be fully documented in the filing.

c. If a filer has data that is more suitable for the determination of deductible discounts than National Council on Compensation Insurance Unit Statistical Plan data, its use is encouraged.

(d) Trending.

1. The size of loss distribution or data shall be trended to the effective period of the deductible factors. The trend factor shall be consistent with the historical data and with the most recent rate filing. The trend period shall reflect the average accident date of the underlying data and the average accident date of those policies issued during the effective period of the deductible factors.

2. While trends may affect the shape of the size of loss distribution, these adjustments are difficult to codify and are probably not significant in the short term. Thus, filers may use the assumption that the effect of the trend is uniform for claims of all sizes. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(e) Loss development. Loss development for losses below \$10,000 has a significantly shorter "tail" than for total losses. The assumption that no development takes place on this layer of loss after three (3) to five (5) years may be used in the calculation of the LER. Thus, the size of loss distributions below \$10,000 shall be taken as:

$$F(x) = g(x)/LDF \quad x \leq \$10,000$$

Where $g(x)$ is the distribution function determined from the size of loss data reported as of three (3) to five (5) years and LDF is the loss development factor to ultimate for all claims. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(3) Investment income and increased risk.

(a) It is expected that loss payments by the insurer on losses from policies with deductibles will be made later than those from policies without deductibles, since the insured is responsible for losses below the deductible which would be paid first. Losses above a deductible are also more volatile than losses from the first dollar of loss. The increased volatility increases the risk borne by the insurer.

(b) The adjustment for investment income works in a direction opposite that of the adjustment for increased risk. It shall be assumed that these items completely offset each other. If the filer wishes to include an explicit factor for one (1) of these items, the filer shall also include an explicit factor for the other, and the filing document shall support the use of these factors.

(4) Loan on the prepayment of losses.

(a) The provision in KRS 304.13-400(3)(a) that every dollar of loss that is eliminated by the deductible will first be paid by an insurer and then be reimbursed by the insured amounts to a loan, the effects of which may be recognized in the filing. This factor shall be equal to the amount or proportion of dollars that are eliminated by the deductible times a reasonable interest rate to account for the loss in investment income.

(b) This rate shall reflect the investment earned

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during the period of the loan. Insurers shall reflect repayment of losses three (3) months after the claim. Thus, the factor "k" is determined by the following formula:

$$k = (1+y)^{90} - 1$$

Where y is the yield on ninety (90) day United States treasury bills.

(5) Adverse selection. In some lines of insurance there has been evidence of antiselection with respect to deductibles, that is, those that choose to purchase insurance with a deductible tend to have losses that exceed those losses which are expected. LERs may be reduced for adverse selection by up to five (5) percent, unless a greater reduction is clearly supported by facts such as loss ratios by deductible and class which clearly show that the deductible discounts are consistently, across classes and time, high. For the initial filing, data from other states with deductibles can be used to support the selection of the factor.

(6) Credit risk. This factor is intended to account for losses below the deductible paid by insurers and not reimbursed by insureds due to bankruptcy. If the percentage of businesses that become bankrupt annually in Kentucky is expected to be "z," then the load should assume that z% of the amount "on loan" will not be reimbursed. This is calculated as follows:

$$c = z/4$$

Factors between 0 and 2.5% may be used.

Section 4. Effect on Rate Making. (1) Data. Rate-making data from the National Council on Compensation Insurance Unit Statistical plan shall be modified to include a field indicating the deductible on the policy. Financial data calls shall also segregate data by deductible.

(2) Gross versus net data. KRS 304.13-057 requires that net data be used in rate making. However, adjustments to net data shall be made in the rate-making process to account for the presence of deductibles. That is, losses shall be loaded by the LER (adjusted for antiselection) to a gross basis prior to the rate-making process. The LER and antiselection factor shall be the same as in the current approved filing.

(3) Methodology. Rate-making methods shall be modified to account for the presence of deductibles. For example, there shall be an adjustment in classification rate making for differences in the distribution of exposures by deductible among classes. Also, there shall be an adjustment in the trending procedure for the presence of a shift in the distribution by deductible.

Section 5. Interrogatories to be Answered in Rate Filings. Every rate filing for a workers' compensation insurance deductible shall include a completed interrogatories form as set forth in Appendix B to this regulation.

APPENDIX A TABLE OF CLASSIFICATIONS BY HAZARD GROUP

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
0005	II	1438	III	2065	II
0008	II	1452	III	2070	III
0016	II	1463	III	2081	II
0034	II	1470	III	2089	II
0035	II	1472	III	2095	II
0036	II	1624	III	2101	II
0037	II	1642	III	2105	II
0042	III	1654	III	2110	II
0050	II	1655	III	2111	II

0079	II	1699	III	2112	II
0083	II	1701	III	2114	II
0106	III	1710	III	2121	II
0113	II	1741	IV	2130	II
0169	II	1747	III	2131	II
0170	II	1748	III	2143	II
0251	II	1803	IV	2150	II
0400	II	1852	III	2156	II
0401	III	1853	III	2157	II
0908	II	1860	II	2172	I
0909	II	1924	II	2174	I
0912	II	1925	III	2177	I
0913	I	2001	II	2211	III
0917	II	2002	II	2220	II
1005	III	2003	III	2286	II
1164	IV	2014	III	2288	II
1165	III	2016	II	2300	I
1219	IV	2021	II	2302	II
1320	III	2030	III	2305	II
1322	III	2039	II	2361	I
1430	III	2041	I	2362	II

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
2380	I	2747	I	3082	III
2386	I	2759	II	3085	III
2388	II	2790	II	3091	II
2402	III	2802	II	3110	II
2413	II	2812	II	3111	II
2416	II	2826	II	3113	II
2417	II	2835	I	3114	II
2501	II	2836	I	3118	II
2503	II	2841	II	3119	I
2534	II	2881	II	3122	II
2570	III	2883	II	3126	II
2576	I	2913	II	3131	I
2578	II	2915	III	3132	III
2585	II	2916	II	3145	I
2586	II	2923	II	3146	II
2587	II	2942	I	3169	II
2589	II	2960	II	3175	II
2600	II	3004	III	3179	II
2623	II	3018	II	3180	II
2651	II	3022	II	3188	II
2660	II	3027	II	3220	II
2670	I	3028	II	3223	I
2683	II	3030	III	3224	I
2688	I	3040	III	3227	II
2702	III	3041	II	3240	II
2710	III	3042	II	3241	II
2714	II	3064	II	3255	I
2731	III	3066	II	3257	II
2735	II	3076	II	3270	II
2741	I	3081	III	3300	I

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
3303	II	3824	II	4301	II
3307	II	3826	III	4304	III
3315	II	3827	II	4307	II
3334	II	3830	III	4308	II
3336	II	3851	II	4350	II
3365	III	3865	I	4351	II
3372	III	3881	II	4352	II
3373	II	4000	IV	4360	II

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3383	II	4021	III	4361	II	5146	II	6204	III	7323F	IV
3385	II	4024	III	4362	III	5160	III	6206	IV	7327F	IV
3400	III	4034	III	4410	II	5183	III	6213	III	7350F	IV
3507	II	4036	III	4417	II	5188	III	6214	III	7360	III
3515	II	4038	I	4420	III	5190	III	6216	III	7370	III
3548	II	4053	II	4431	I	5191	III	6217	III	7380	III
3559	II	4061	II	4432	I	5192	II	6229	III	7382	III
3565	I	4062	II	4439	III	5213	III	6233	III	7390	III
3574	II	4063	II	4452	II	5215	II	6235	III	7403	II
3581	II	4101	III	4459	II						
3612	III	4111	II	4470	III	Code	Hazard	Code	Hazard	Code	Hazard
3620	III	4112	II	4484	II	No.	Group	No.	Group	No.	Group
3629	II	4113	II	4493	II						
3632	II	4114	II	4511	II	7405	IV	8006	II	8204	III
3634	II	4130	II	4557	II	7418	IV	8008	II	8209	II
3635	II	4131	II	4558	II	7420	IV	8010	II	8215	II
3638	II	4133	II	4561	II	7421	IV	8013	II	8227	III
3639	II	4150	I	4568	III	7422	IV	8017	II	8232	III
3642	II	4206	II	4581	III	7423	III	8018	II	8233	III
3643	III	4207	II	4583	III	7425	IV	8021	II	8235	II
3647	III	4239	III	4611	II	7431	IV	8031	II	8236	II
3648	II	4240	II	4635	IV	7502	III	8032	II	8263	II
3681	II	4243	II	4653	II	7515	IV	8033	II	8264	II
3685	II	4244	III	4665	III	7520	III	8039	II	8265	III
3719	III	4250	II	4670	III	7538	IV	8044	II	8279	II
3724	III	4251	I	4683	II	7539	III	8046	II	8288	II
3726	III	4263	II	4686	III	7540	IV	8047	II	8291	II
3803	II	4273	II	4692	II	7580	III	8050	II	8292	II
3807	II	4279	II	4693	II	7590	II	8058	II	8293	II
3808	II	4282	II	4703	II	7600	III	8061	II	8304	III
3821	III	4283	II	4717	I	7601	III	8102	II	8350	III
3822	II	4299	II	4720	II	7605	III	8103	II	8380	III
						7610	III	8105	II	8381	II
Code	Hazard	Code	Hazard	Code	Hazard	7704	IV	8106	III	8385	III
No.	Group	No.	Group	No.	Group	7720	IV	8107	III	8392	III
						7855	III	8111	II	8393	III
4740	III	5221	III	6236	III	8001	I	8116	II	8500	III
4741	II	5222	III	6237	III	8002	II	8203	II	8601	III
4743	III	5223	III	6251	III						
4751	III	5348	III	6252	III	Code	Hazard	Code	Hazard	Code	Hazard
4770	IV	5402	II	6260	IV	No.	Group	No.	Group	No.	Group
4773	IV	5403	III	6306	III						
4774	IV	5437	III	6319	III	8606	III	9019	III	9410	III
4775	IV	5443	II	6325	III	8709F	III	9033	II	9501	I
4776	IV	5445	III	6400	II	8710	III	9040	II	9505	I
4777	III	5462	III	6504	II	8719	III	9052	II	9519	III
4779	IV	5474	III	6801F	III	8720	III	9058	II	9521	III
4799	IV	5479	III	6811	III	8726F	III	9060	III	9522	II
4800		5480	III	6824F	III	8742	III	9061	II	9529	IV
thru		5491	III	6826F	III	8745	II	9063	II	9534	III
4811	IV	5506	III	6834	III	8748	III	9077F	II	9545	III
4812		5507	III	6836	III	8755	III	9079	II	9549	III
thru		5508	III	6843F	IV	8800	II	9088	IV	9552	III
4825	III	5538	III	6845F	III	8803	III	9089	II	9586	I
4860		5551	III	6854	IV	8810	II	9093	I	9600	II
thru		5606	III	6872F	IV	8820	II	9101	II	9620	II
4883	IV	5610	III	6874F	III	8829	II	9102	III		
4902	I	5645	III	6882	IV	8831	II	9154	III		
4923	II	5651	III	6884	III	8832	III	9156	II		
5020	III	5703	III	7133	III	8833	II	9178	II		
5022	III	5705	III	7219	III	8835	II	9179	II		
5037	IV	5951	II	7222	III	8837	II	9180	III		
5040	IV	6003	III	7230	III	8868	II	9182	II		
5057	IV	6005	III	7231	III	8901	III	9186	III		
5059	IV	6017	III	7309F	IV	9014	II	9220	II		
5069	III	6018	III	7313F	IV	9015	III	9402	III		
5102	III	6045	III	7317F	IV	9016	II	9403	III		

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APPENDIX B COMMONWEALTH OF KENTUCKY DEPARTMENT OF INSURANCE FRANKFORT, KENTUCKY 40601

INTERROGATORIES FOR WORKERS' COMPENSATION INSURANCE DEDUCTIBLE RATE FILINGS

1. Are the deductible discounts the same as those current on file for another insurer or advisory organization?
Yes _____ No _____

2. If yes, name the insurer(s) or advisory organization(s):

3. List the deductible discount factors to be used:

Deductible	Hazard Group			
	I	II	III	IV
\$ 100	_____	_____	_____	_____
200	_____	_____	_____	_____
300	_____	_____	_____	_____
400	_____	_____	_____	_____
500	_____	_____	_____	_____
1,000	_____	_____	_____	_____
1,500	_____	_____	_____	_____
2,500	_____	_____	_____	_____
5,000	_____	_____	_____	_____
7,500	_____	_____	_____	_____
10,000	_____	_____	_____	_____

4. List the parameters of the formula set forth in 806 KAR 13:120§3(2)(a):

- i) Loss Elimination Ratio by Deductible:

Deductible	Hazard Group			
	I	II	III	IV
\$ 100	_____	_____	_____	_____
200	_____	_____	_____	_____
300	_____	_____	_____	_____
400	_____	_____	_____	_____
500	_____	_____	_____	_____
1,000	_____	_____	_____	_____
1,500	_____	_____	_____	_____
2,500	_____	_____	_____	_____
5,000	_____	_____	_____	_____
7,500	_____	_____	_____	_____
10,000	_____	_____	_____	_____

- ii) Trend Factor(s):

- iii) Loss Development Factors:

Age of Development	Factor
_____ to Ultimate	_____
_____ to Ultimate	_____

- iv) Investment income and increased risk factors (list on separate sheet if necessary):

a) Do they offset each other? ____ Yes ____ No

b) If NO, is documentation provided? ____ Yes ____ No

- v) Factor to account for the loan on prepayment of losses (list on separate sheet if necessary):

- vi) Adverse selection adjustment:

If the above factor is greater than 5%, provide documentation.

- vii) Credit risk adjustment: _____

5. How are deductibles accounted for in the rate-making methodology?

6. How are deductibles accounted for in the experience rating plans?

Form WCD-1 (11-92)

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 4, 1993

FILED WITH LRC: January 8, 1993 at 4 p.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for February 22, 1993, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on February 22, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts

Need for proposed regulation: KRS 304.13-410 provides that premium reductions for deductible workers' compensation insurance policies shall be calculated by the insurer in accordance with administrative regulations promulgated by the Commissioner of Insurance. This administrative regulation establishes the method of calculating premium reductions for workers' compensation deductible insurance policies. The general approach is to prescribe the deductibles which may be used and then established the formulas to be used in calculating the premium discount applicable to the various deductibles.

(1) Type and number of entities affected: There are 268 insurers transacting workers' compensation insurance in Kentucky. The proposed administrative regulation will also affect an unknown number of employers who may desire to purchase a workers' compensation insurance deductible policy.

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

1. First year: Insurers will be required to establish procedures to calculate deductibles in accordance with the formula set forth in the proposed administrative regulation.

2. Continuing costs or savings: Current information must be maintained in order to calculate the discounts.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The proposed administrative regulation requires detailed recordkeeping. This is to make it certain that insurers can justify the levels of discounts.

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(b) Reporting and paperwork requirements: The proposed administrative regulation requires that workers' compensation deductible rate filings be accompanied by interrogatories as set forth in Appendix B.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Insurance will have to review the rate filings containing discounts to determine whether the discounts are correct. However, the interrogatories set forth in Appendix B will assist in determining whether the proposed discount is correct.

2. Continuing costs or savings: As new rate filings are made, they must be reviewed to determine whether the proposed discount is correct.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will have to maintain copies of the interrogatories as set forth in Appendix B. However, the department is already required to maintain records of workers' compensation insurance rate filings pursuant to KRS 304.13-051.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required by KRS 304.13-410(2).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is used in that different levels of deductibles are established. Further, since detailed information is necessary to calculate the discount, discounts will "track" each insurers' experience.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission

810 KAR 1:030. Simulcast facilities.

RELATES TO: KRS 230.380

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: Defines the procedures necessary for a licensed host track, tracks, or entity wholly owned by two (2) or more licensed tracks to obtain approval from the commission for the initial license and the annual renewal license of a simulcast facility as required by statute.

Section 1. Initial License Application. A licensed host track, tracks, or entity wholly owned by two (2) or more licensed tracks, shall submit the following list of information to apply for a license to operate each simulcast facility. Any changes in the information provided must be supplied to the commission as changes occur and any such changes shall be subject to commission approval.

(1) Name of host track, tracks, or entity as defined in this section operating the simulcast facility. If the applicant is an entity wholly owned by two (2) or more licensed tracks, provide: the name of the participating licensed tracks; copies of organizational documents; name of the entity; location of principle office; and names of officers and directors.

(2) Location of simulcast facility.

(3) Owner of the real property on which the simulcast facility shall be located, including street address.

(4) Name, type, and owner of any business enterprise that may be at that same location, building, or street address.

(5) Name, address, and home phone number of on-site manager of the simulcast facility.

(6) Schedule of races to be simulcast identifying the host tracks.

(7) Description of facilities including:

(a) Total capacity;

(b) Seating capacity excluding dining;

(c) Dining;

(d) Washrooms;

(e) Parking; give location and distance to simulcast facility.

(8) Identify the authority for the sale of alcohol if applicable.

(9) Name of supplier of concessions, food, and alcohol services.

(10) Name of totalizator service and mutuel manager.

(11) Name of and distance to nearest other licensed racing association or ITW facility as allowed by KRS 230.210(10).

(12) Location of and distance to nearest lottery vendor.

Section 2. The information required in Section 1(3), (4), (5), (7), (9), (10), (11) and (12) of this administrative regulation may be supplied after the initial application, but not later than five (5) days before the facility would commence operations.

Section 3. Annual Review for Renewal. A licensed host track, tracks, or entity as defined in Section 1 of this administrative regulation, shall submit the following list of information for the commission to renew the license for an existing simulcast facility.

(1) The application to renew a license for a simulcast facility shall be filed no later than November 1 in the year preceding the year for which the license may be issued and shall include all information required by Section 1(1) through (10) of this administrative regulation.

(2) The provisions of KRS 230.380 (2) and (3) shall not apply to the annual renewal of a license for a simulcast facility.

Section 4. General Requirements. All simulcast facilities must be kept in an excellent state of repair and shall be operated to ensure that the image of racing and pari-mutuel wagering is enhanced. All simulcast facilities shall provide adequate security for the public to assure the perception and fact of an honest enterprise free of corrupt practices.

(1) All pari-mutuel wagering must be conducted through a host track licensed by the commission. All interstate wagering shall be received only through a host track licensed by the commission. Any malfunction of the totalizator shall be immediately reported to the host track and to the commission; any action needed to correct the mutuel pools at a simulcast facility shall be calculated by the mutuel manager of the host track. Pools shall be limited to the host track's pools and all payoffs shall be consistent with the common pools of the host track.

(2) All simulcast facilities shall meet all local and state fire and life safety codes at all times. All accidents resulting in injury shall be reported to the commission and any crimes on the property shall also be reported.

(3) Food and dining services must be of good quality, so as to promote the image of racing and that of a quality establishment.

(4) Proper smoke ventilation shall be provided to ensure adequate fresh air for all designated smoking sections.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 21, 1992

FILED WITH LRC: December 22, 1992 at 4 p.m.

PUBLIC HEARING: A public hearing will be held on February 23, 1993 at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B., Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: All nine licensed associations and all potential OTB (off-track betting) outlets.

(a) Direct and indirect costs or savings to those affected: There is 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: Defined in KRS 230.380; minimal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no cost factors.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Very minimal.

(3) Assessment of anticipated effect on state and local revenues: Will add approximately \$600,000 to local government revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method chosen as consensus of affected parties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is 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. There was nothing to tier. All facilities should be treated alike.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of the January 4 and 5, 1993 Meeting

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 4, 1993, at 2 p.m. and Tuesday, January 5, 1993 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 December 1 and 2, 1992 meeting were approved.

Present were:

Members: January 4, 1993: Representative Tom Kerr, Chairman; Senator Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates. January 5, 1993: Representative Tom Kerr, Chairman; Senator Gene Huff; Representatives Jim Bruce and James Yates.

Guests: Pam Johnson, William P. Hanes, William E. Johnson, Kentucky Employee Retirement Systems; Warren Nash, Donald R. Speer, Edgar Ross, Finance and Administration Cabinet; Ralph Bouvette, Richard L. Ross, Kentucky Board of Pharmacy; Nathan Goldman, Bernadette Sutherland, Paula Stone, Board of Nursing; Nancy Brinly, Board of Physical Therapy; Sandra Noble Canon, State Interagency Council for Services to Children with an Emotional Disability; Lauren Schaaf, George Wright, Fish and Wildlife; James Hale, David W. Morgan, Russell Barnett, Kenneth M. Hines, Millie Ellis, Vicki M. Pettus, George F. Gilbert, John Hornbeck, Linda Stacy, NREPC; Cheryl Roberts, Robert Powell, Jack Damron, Steve Smith, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Gary Griesser, Gary Faulkner, Michael L. Luscher, Florence S. Huffman; Department of Education; George Parsons, Kathy Williams, Carol Hatfield, Sue G. Simm, Beverly H. Haverstock, Workforce Development Cabinet; L. T. Grant, Larry M. Greathouse, James Gary Lee, Judge Armand Angelucci, Valerie Salven, Department of Workers' Claims; Eugene Attkisson, Mines and Minerals; Patrick Watts, Department of Insurance; Judith Walden, Department of Housing, Buildings and Construction; Carrie Banahan, Anita Moore, Ralph Von Deran, Sylvia Cherry, Cindy Brown, Jeff Vessels, Eric Friedlander, Reginald Finger, Joyce Lea, Marcie Beatty, Janice Kline, Cabinet for Human Resources; Jan Blake Pearson, Joe Valona, Alliant Health System; Randy Napier, Frazier Rehab Center; Terry R. Shockley, Frankfort Hab, Inc.; Bill Young, Kentucky Manufactured Housing; Marie Alagia Cull, Diversified Health Services of Kentucky, Inc.; Bill Doll, Jack Kelly, Kentucky Medical Association; Rick Christman, Janet Goodacre, Metro Industries; Lola Davis, Jewish Hospital; Tim Estes, Troy Steven Gilbert, The Arc of Kentucky; Nancy Galvagni, Kentucky Hospital Association; Daniel T. Yates, Kentucky Association of Electric Cooperatives; Mark Dempsey, Kentucky Power; Thomas Marshall, Health Insurance Association of America; Libby Harvey, Kentucky School Boards Association; Jane Hart, Kentucky Disabilities Coalition; Ted Bradshaw, Independent Agents of Kentucky; Walter B. Miller, Syncor.

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:

Finance and Administration Cabinet: Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel. This administrative regulation had been deferred from the December 1992 Subcommittee meeting in order to permit agency and Subcommittee staff to address issues raised, and to prepare amendments resolving these issues to the satisfaction of the Subcommittee. Questions had been raised relating to compliance with the language requirements of KRS 13A.222 such as expression of mandatory requirements; the failure to specify forms, and other items such as official mileage maps, required by this administrative regulation; format of sections and vague language. In addition, reimbursement of "other persons in the official service of the Commonwealth" was questioned on the grounds that it appeared to violate Section 3 of the Kentucky Constitution that prohibit a "grant of exclusive, separate public emoluments or privileges...except in consideration of public services."

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to include the specific citation of applicable sections of KRS Chapters 44 and 45. These paragraphs are required to contain the specific sections relevant to an administrative regulation, rather than a listing of the Chapter in which they appear; (2) To correct format, language and phrases, pursuant to KRS 13A.222 relating to expression of mandatory requirements, and KRS 13A.220 relating to format requirements; (3) Numerous sections were reworded in order to clarify the requirements; (4) Material required by the administrative regulation, especially forms and such items as official mileage maps, was incorporated by reference, and forms were specifically incorporated by name and number; and (5) Section 4 was amended to clarify requirements for authorization for travel reimbursement in Kentucky and outside the state.

Chairman Kerr asked Subcommittee staff to explain the constitutional issue. Subcommittee staff stated that although "other persons in the official service of the Commonwealth" may not strictly be state officers or employees, they perform a service for the Commonwealth in all branches of government. While existing statutes may appear not to permit reimbursement of "other persons...", it was not clear that such reimbursement was prohibited. If it were determined to be prohibited, since "other persons..." did perform a service for the Commonwealth, an amendment to existing statutes may be sufficient to resolve the issue.

Subcommittee staff recommended that LRC be requested to refer this issue to the appropriate Interim Joint Committee in order to determine whether: (1) An amendment to existing statutes, as discussed above, would resolve the issue; or (2) After a study of the legal issues by appropriate staff, Section 3 of the Kentucky Constitution prohibited reimbursement of "other persons...". The Subcommittee approved the administrative regulation as amended, and the referral to LRC.

Board of Pharmacy

201 KAR 2:215. Nuclear pharmacy services. This administrative regulation was amended to comply with the following: KRS 13A.222(4) drafting requirements; KRS 13A.220(4)

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format requirements; and KRS 13A.010(2), by inserting the word "administrative" before the word "regulation".

Board of Physical Therapy

201 KAR 22:135. Fees. This administrative regulation was amended to comply with KRS 13A.010(2) by inserting the word "administrative" before the word "regulation".

State Interagency Council for Services to Children with an Emotional Disability

202 KAR 1:010. Uniform grievance procedure for children with an emotional disability. This administrative regulation was amended to comply with the following: KRS 13A.222(4) drafting requirements; KRS 13A.220(4) format requirements; and KRS 13A.010(2), by inserting the word "administrative" before the word "regulation".

Representative Bruce asked what measures are taken when a grievance is filed on behalf of a child with an emotional disability. The agency representative responded that the State Interagency Council for Services to Children with an Emotional Disability has a uniform procedure to address several concerns. Subsequent to a formal inquiry, the Council makes recommendations for a resolution of the issues or concerns.

Justice Cabinet: Department of Corrections: Class D Felons

501 KAR 2:020. Definitions. This administrative regulation was amended to comply with KRS 13A.220(4) format requirements.

501 KAR 2:030. Purpose. This administrative regulation was amended to comply with KRS 13A.120(2)(e) which prohibits an administrative body from promulgating an administrative regulation if a statute prescribes the same or similar procedure for the matter regulated.

501 KAR 2:040. Waivers. This administrative regulation was amended to comply with KRS 13A.120(2)(e) which prohibits an administrative body from promulgating an administrative regulation if a statute prescribes the same or similar procedure for the matter regulated.

501 KAR 2:060. Procedures for housing of Class D felons. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements.

Office of the Secretary

501 KAR 6:070. Kentucky Correctional Institution for Women. This administrative regulation was amended to add 18 USC 1341 and 39 USC 4005 to the reference section in KCIW 16-01-01.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials; permit. This administrative regulation was amended as follows: (1) the title was amended by adding "by air or highway" at the end; (2) After "174.435", the NECESSITY AND FUNCTION paragraph was amended by adding "relating to the transportation of hazardous materials by air or highway"; (3) Section 1(3) was amended by deleting ". The requirements in this federal regulation for the transportation of hazardous materials by waterway, railway or pipeline are beyond the scope of this administrative regulation". These amendments were made to comply with KRS Chapter 13A requirements when adopting federal regulations without change.

Commercial Driver's License

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles. Section 1(3)(b) was amended by deleting "defined" and replacing it with "delineated". This amendment refers to the health care professionals listed in a federal regulation.

Representative Allen asked for an explanation of the "Medical Waiver". Cabinet personnel stated that a person applying for a commercial drivers' license for intrastate driving only, and who fails to meet the physical requirements required in 49 CFR 391, may request an exemption by applying and having an applicable medical form completed by a doctor. The department bases its decision on medical waiver on the information in the form and other information available.

Department of Education: Education Professional Standards Board

704 KAR 20:585. Procedures for certificate revocation. This administrative regulation was amended as follows: (1) to comply with KRS 13A.220(4) format requirements; (2) Section 5 was amended to permit the filing of a request for continuance within five (5) days, rather than ten (10) days, prior to a scheduled hearing; and (3) Section 6(6)(a) was amended to permit the mailing of a subpoena form with the Statement of Charges and Notice of Hearing letter.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services. This administrative regulation was amended by adding the citation "34 CFR 361.31(b)" to the RELATES TO and STATUTORY AUTHORITY paragraphs.

781 KAR 1:060. Admission and discharge from work training centers and community facilities. This administrative regulation was amended by adding the citation "34 CFR 361.31(b)" to the RELATES TO and STATUTORY AUTHORITY paragraphs. Rick Christman, Metro Industries of Lexington, opposed the change relating to the funding method of purchasing services. He stated that Metro Industries is one of sixteen agencies that will be impacted, and that it could not plan ahead with any degree of certainty as to the amount of revenue that could be expected to support its operations for the fiscal year.

George Parsons, Cabinet personnel, responded that it is a different purchasing and accounting system, but that the federal government wanted a cleaner tracking system. He stated that he could say whether it will or will not devastate any particular facility, but that it shouldn't make much difference.

Mr. Cristman pointed out that he felt confidence in the current commissioner, but commissioners change. Chairman Kerr advised Mr. Cristman to check with the staff of the next Subcommittee to which the administrative regulation will be referred, and apprise them of Metro's concerns well in advance of that Subcommittees meeting so that the members of that Subcommittee will be well informed of the situation.

Labor Cabinet: Workers' Compensation Board

803 KAR 25:091. Workers' compensation hospital fee schedule. This administrative regulation was amended as follows: (1) To comply with KRS 13A.222(4) drafting requirements and (2) New language was added in Section 9(3) and

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Section 10.

A representative for the Kentucky Medical Association (KMA) stated that: (1) Section 10 requires that bills submitted by a hospital or hospital-based physician shall be accompanied by a "certification"; (2) The certification shall be based on reasonable grounds listed in the proposed amendment; and (3) A signature by the "medical provider" is required to attest that the services or supplies provided to a patient were "reasonably required for a work-related injury or occupational disease."

The KMA representative stated that the certification requirement relates more to legal issues than to a medical bill for services rendered. He added, while physicians give medical testimony or offer medical opinions as to work-related injuries, the Association feels the certification requirement is inappropriate. The consequences of this new requirement, he explained, are to place physicians or medical providers in adversary proceedings at an earlier stage than has otherwise been the case. This makes the physician a quasi-agent for the insurance carrier, when it should be the carrier who should investigate whether the care provided relates to an injury that was work related or a derivative of an occupational disease.

Chairman Kerr responded that he viewed this requirement as analogous to a doctor who provides services to one injured in an automobile accident. The doctor would likewise be required to submit a certification in order to be paid by the no fault insurance carrier. The certification would indicate, within reasonable medical probabilities, whether the injuries were a result of the auto accident. Chairman Kerr noted that a compromise amendment to Section 10 appeared to meet with the Board's and the Association's approval at this time.

A representative of Jewish Hospital stated that additional costs incurred by teaching hospitals should be recognized by the Board as an allowable expense. She requested that the Board amend the administrative regulation to recognize an additional "add on" of five percent for teaching hospitals, and for federally designated disproportionate share facilities, which treat a disproportionate share of indigent patients.

Judge Grant responded that the Board has addressed the issue relating to teaching hospitals in Section 3(3) of the administrative regulation. He explained that if hospitals treat indigent patient and have seventy percent or more patients covered and reimbursed by Medicaid or Medicare, their eighty-five percent cap is removed and raised to one hundred percent.

On the issue of teaching hospitals, the Board responded that the "add on" which was amended from twelve percent to fifteen percent percentile addition was fair and reasonable and that the Board had made adequate compromises. He further explained that Kentucky is perhaps one of a few states with the highest "add on" formula for a Hospital Fee Schedule. He also concluded that most states do not offer an additional add on to their formula for teaching hospitals.

Kentucky Hospital Association representative stated that in surveying a few states formulas, she had found that none impose a cap of eighty-five percent. She explained that the cap for the University of Kentucky is significant because their cost-to-charge ratio, plus the fifteen percent "add on" does not put U.K. over the eighty-five percent, and subsequently they are not permitted to have their entire cost recognized.

Jewish Hospital stated that Section 3(3): (1) takes care of Medicare and Medicaid, but not uninsured patients; (2) only

partially addresses Medicaid and Medicare percentage of occupancy, and this should not be confused with the disproportionate share issue.

Chairman Kerr asked for clarification of the Board's cost-to-charge ratio and "add on" formula does not offer an "additional add on" to provide for other indigent care provided by a hospital.

The Jewish Hospital representative explained that a five percent additional "add on" was quite reasonable. She offered a basis for the five percent request by explaining that after reviewing all of the teaching facilities in Kentucky and comparing their Medicare "case mix index" (the index measures the hospital's resource consumption) to the top twenty-five percent state hospitals case mix index, the result was a twenty-three percent difference in resource consumption. She added that on that basis, a conservative five percent "additional add on" seemed like a reasonable request, particularly since Medicare allows Jewish Hospital an "additional add on" of eight percent for teaching reimbursement.

Chairman Kerr asked how many teaching facilities would be effected. She explained Jewish Hospital is proposing that the Board utilize the Medicare Cost Report and consider the "additional add on" for those facilities that have both direct and indirect medical expense cost. Utilizing the report would place the number of qualifying hospitals at eight or more.

Senator Huff asked what percentage of business at Jewish Hospital is worker compensation related. The representative could not provide a specific percentage. She stated that it is a significant percentage of revenue, as Jewish receives some of the most critical work related injuries, such as neurological and hand injuries. Consequently, expenses are greater in relation to other patients.

Representative Bruce asked what teaching facilities would qualify. The representative responded that based upon the Medicare Cost Report, the number of qualifying facilities would be more than just the primary teaching hospitals.

A representative from the Kentucky Hospital Association (KHA) supported the additional add on for teaching hospitals on the grounds that Medicare and Medicaid do recognize an additional add on in their payment formulas. She stated that two issues were involved. The second issue relates to the imposition of a cap on teaching hospitals. Since facilities have a higher cost-to-charge ratio, placing a cap effectively cuts off the ability to recognize those legitimate costs.

On the disproportionate share issue, the KHA representative stated that the eighty-five percent cap waiver in Section 3(3) does permit those facilities who meet the cap to recoup the full cost-to-charge plus fifteen percent. However this "add on" does not recognize hospitals that render a disproportionate amount of indigent care. She pointed out that the Board in its initial public hearing stated that it did not have the methodology to calculate differential adjustments, and instead compromised with an amendment to Section 3(3) to change from a twelve percent to a 15 percent addition across the board to hospitals. She stated that KHA supports the proposition that Kentucky hospitals meeting the federal designation as disproportionate share hospitals should be awarded an "additional add on" in recognition of disproportionate share.

A representative of Frazier Rehab Center, which operates five comprehensive out-patient rehab facilities licensed as individual entities, requested the Board's assurance that these facilities will be evaluated on an individual basis, because the cost of services varies by each facility.

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Judge Grant responded that if these facilities file a "Form 2552" and submit cost and charges with the Cabinet for Human Resources, which are used to compute individual ratios, each facility is evaluated as an individual entity with a uniquely corresponding ratio.

Representatives from Alliant Health System in Louisville raised issues relating to dedicated occupational medicine clinics operated by hospitals and located within a hospital facility. They proposed an amendment to Section 2 that would allow these clinics the option of billing for their services either under the Hospital Fee Schedule or the Medical Fee Schedule [803 KAR 25:090]. Alliant explained that the occupational medicine service is a hospital owned service, and that the physician who runs the service is an employee of the hospital. Alliant stated that this is distinguished from a physician's practice that is located within a hospital.

Alliant stated that the Board's amendment in Section 9(3), "or other provider", does not clearly address the issue of occupational medicine services provided in a hospital setting. These services are currently billed at amounts significantly under the caps established in the Medical Fee Schedule. Alliant requested an amendment that would permit the option to bill under either fee schedule.

Judge Grant explained that the amendment to Section 9(3) was proffered by the Board to address concerns relating to clinics located within a hospital that qualify to bill under the Medical Fee Schedule (803 KAR 25:090), rather than the Hospital Fee Schedule. He stated that Section 9(3) had provided that: "Any physician performing services in a hospital, which are regulated pursuant to 803 KAR 25:090, shall bill under the Medical Fee Schedule." The Board amended this section by adding "or other provider" to clarify that clinics, physical therapists, and other providers who qualified under 803 KAR 25:090 shall also bill for services under the Medical Fee Schedule rather than the Hospital Fee Schedule imposed by this administrative regulation. He concluded that this language should take care of the concerns raised by Alliant.

Alliant asked Judge Grant if the clinic could make a notation on the hospital's UB-82 Form that it was covered under the Medical Fee Schedule. He agreed to this clarification.

Chairman Kerr stated that the Board had made substantial changes to address some of the concerns raised. He advised those who have problems with the administrative regulation as amended, to inform the Subcommittee and it would reconsider the administrative regulation.

Representative Bruce asked whether the Board would consider amending this administrative regulation in the near future as concerns are raised. The Board agreed.

Chairman Kerr stated that the Board had agreed to amend the administrative regulation to incorporate the Hospital Fee Schedule in the near future and remaining concerns could be addressed at that time.

The Subcommittee approved the Board's proposed amendments.

Department of Mines and Minerals: Miner Training, Education and Certification

805 KAR 7:030. Annual retraining program. This administrative regulation was amended to insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2).

Department of Insurance: Health Insurance Contracts

806 KAR 17:081. Minimum standards for long-term insurance policies. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; (2) KRS 13A.220(4) format requirements; and (3) KRS 13A.010(2) by inserting the word "administrative" before the word "regulation".

A representative of Diversified Health Services of Kentucky, Inc. objected to Section 22. She explained that Section 22 does not adequately address agent compensation for issuance of replacement policies. She stated that it was her understanding the original language did not provide any compensation, and that the Department amended this section by placing a cap of 200 percent. This cap is the equivalent of approximately eight percent of the value of the policy.

Diversified proposed increasing this cap to 400 percent, based both on the evolving nature of long-term care policies and the time necessary to become and remain educated regarding long-term care issues. She pointed out that newer policies are better than those issued in earlier years, and that the replacement of policies does not necessarily mean the "rolling over" of existing policies into similar policies. Diversified requested that the Department make a distinction between the: (1) "rolling over" of policies, in which case the 200 percent would appear equitable; and (2) "replacement" and issuing of policies with a "substantially different" coverage, in which case the 400 percent cap is more representative of what the industry norm is for issuing a new policy.

The Department responded that Diversified's proposed amendment would essentially gut Section 22, and would void the statutory requirement that the administrative regulation have some limits on agent compensation. The rationale for the statutory limit on compensation, it was explained, is to discourage the "churning of long-term care insurance" (replacing policies without any benefit to the insured to merely generate commissions).

The Department stated that the administrative regulation as originally proposed had a 200 percent renewal commission limitation on any insurance initially written and replacement commissions would have been level. That is, agents would not have received more commission for a replacement than for a renewal commission on the old policy. He added that, after objections were raised that the Department should not propose any limitations, interested persons were advised of the statutory mandate and compromises were made to Section 22. The Department representative stated that agreement was reached at the public hearing on this issue with many interested parties including the Kentucky State Association of Underwriters, the National Association of Life Underwriters, the Association of Health Insurance Agents and the Health Association of America.

The Department representative stated it would be virtually impossible to determine when policy coverage was "substantially better or different", even with a definition as proposed by Diversified's representative. He concluded that the proposed amendment would be contrary to the statutory prohibition against the "churning of business".

Department of Housing, Buildings and Construction: Manufactured Homes and Recreational Vehicles

815 KAR 25:010. Manufactured homes. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; and (2) KRS 13A.220(4)

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format requirements.

815 KAR 25:030. Certified installers of manufactured housing. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:160. Human immunodeficiency virus education, continuing education for professionals. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; and (2) KRS 13A.220(4) format requirements. Section 3(4) was amended to clarify a standard as it relates to continuing education coursework. The amendment deleted the words "...moral, ethical and legal issues surrounding" and inserted after "A brief review of the", "professional ethical and legal standards applicable to a care giver for a person with HIV infection."

Health Services and Facilities

902 KAR 20:320. Psychiatric residential treatment facility operation and services. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; (2) KRS 13A.220(4) format requirements; and (3) KRS 13A.010(2) by inserting the word "administrative" before the word "regulation".

Department for Social Insurance: Public Assistance

904 KAR 2:015. Supplemental programs for the aged, blind, and disabled. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements; (2) KRS 13A.220(4) format requirements; and (3) KRS 13A.010(2) by inserting the word "administrative" before the word "regulation". In the following sections, the reference to the date and fee were amended: Section 5(1)(a), Section 5(1)(b), Section 5(1)(c) paragraphs 1., 2., and 3.

904 KAR 2:035. Right to apply and reapply. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements.

The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:

Board of Nursing

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

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:140. Seasons for wild turkey.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Administrative Procedure

401 KAR 51:010. Attainment status designations.

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

New Source Standards

401 KAR 59:175. New service stations.

401 KAR 59:430. Standards for performance for industrial-commercial steam generating units.

401 KAR 59:460. Standards for performance for sulfuric acid plants.

401 KAR 59:635. Standards for performance for the graphic arts industry: publication rotogravure printing.

401 KAR 59:705. Standards for performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

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

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

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

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

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

Existing Source Standards

401 KAR 61:085. Existing service stations.

General Standards of Performance

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

Justice Cabinet: Department of Corrections: Class D Felons

501 KAR 2:050. Transfer requests.

Office of the Secretary

501 KAR 6:130. Western Kentucky Correction Complex.

501 KAR 6:140. Bell County Forestry Camp.

Transportation Cabinet: Division of Toll Facilities

600 KAR 2:010. Toll assessment on turnpikes.

Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety regulations.

Department of Education: Office of District Support Services: General Administration

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

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

Department for Medicaid Services

907 KAR 1:031. Payments for home health services.

907 KAR 1:102. Advanced registered nurse practitioner services.

907 KAR 1:104. Payments for advanced registered nurse practitioner services.

907 KAR 1:370. Incorporation by reference of the Community Mental Health Services Manual.

907 KAR 1:382. Incorporation by reference of the Preventive Health Services Manual.

907 KAR 1:427. Incorporation by reference of the Primary Care Services Manual.

907 KAR 1:430. Incorporation by reference of the Home Health Services Manual.

907 KAR 1:474. Incorporation by reference of the Durable Medical Equipment Manual.

907 KAR 1:550. Incorporation by reference of the Targeted Case Management Services Adult Manual.

907 KAR 1:555. Incorporation by reference of the Targeted Case Management Services Children Manual.

907 KAR 1:575. Compliance with laboratory certification

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requirements.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the February meeting upon agreement by the promulgating agency and the Subcommittee:

Kentucky Employees' Retirement Systems: General Rules
105 KAR 1:040. Actuarial assumptions and tables. Pam Johnson, Bill Haynes, and William Johnson (outside counsel), appeared, representing the agency.

Chairman Kerr began the discussion by stating that it was his understanding that the regulation was changing the valuation process from book value to some modified book value which would increase the value of the investment. Ms. Johnson agreed that that was correct.

Chairman Kerr then asked "Will this regulation also result in various governmental agencies having to contribute more to the health insurance part of the full retirement?" To which Ms. Johnson replied "No sir. What this regulation does, is it increases the valuation of the assets. Also, for what paper funds are freed up, it directs those freed up funds to the health insurance fund administered by the Retirement System. What this would do, this coming year, if we left the valuation book value, the KERS contribution rate would have to be increased from 8.66 to 9.17. By making this change it allows the program to leave the rates at 8.66."

Chairman Kerr stated the reason he asked the question was because it was his understanding that the insurance contribution rate would be higher using a modified book value rather than the present book value.

Ms. Johnson responded that "the portion of the funds that are freed up by changing the valuation, those funds will become the contribution to the insurance fund. So it would be increased over what it currently is". Chairman Kerr then responded "What you are saying is that the percentage would be taken care of through the paper change in the valuation," and asked "Is there going to be any actual money that's going to be necessary for somebody to come up with? To which Ms. Johnson replied, "No sir."

Representative Bruce asked if this is the same subject matter as a regulation that was previously found deficient.

William Johnson responded that the previous regulation concerned rates for 1992 that were inconsistent with that which the General Assembly had passed in the Budget Bill.

Representative Bruce then asked what this regulation will do to money in the budget, which Mr. Johnson responded, "Well, it ought to be beneficial, of course, because if this action is not taken, they would be coming in. In other words, if they were using the old value of calculation they would be coming in here and asking for more money, that is, from the employers the state agencies. This way, it drops it, so the rate stays the same. The only difference, Representative Kerr, as you brought up, there is going to be, then, some additional money that would be available, and because of the condition of the insurance fund, then we are hopeful that we can plan on utilizing it in that area to properly fund it or do a better job of funding it I might say."

Senator Huff asked for a clarification between the 1992 proposal and the subject matter of this particular administrative regulation before the Subcommittee today.

Ms. Johnson responded that the previous regulation was actually setting rates. She added that this regulation only changes an assumption in the way that they value the assets of the retirement program.

Following discussion concerning the objection of the Interim Joint Committee on State Government to the prior regulation concerning a rate change, with the reason being a conflict with the Budget Bill and a cost of approximately \$23 million over a two year period, Senator Huff asked how that will affect this present regulation.

Ms. Johnson replied "It shouldn't have any effect on it."

Senator Huff stated that some of the information that he and some of the other Subcommittee members received indicated that there would be a \$23 million increase and he asked if the agency would be agreeable to defer this regulation for additional information.

It was also pointed out that all interested parties should be represented at the next meeting to substantiate their positions.

Ms. Johnson agreed to deferral for a month, to which the Subcommittee agreed.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Solid Waste Planning

401 KAR 49:220. Waste tire trust fund loan program. Several issues were raised concerning 401 KAR 49:220 and 401 KAR 49:230. Chairman Kerr stated that the Subcommittee would first address any proposed amendments to 401 KAR 49:220, and then address 401 KAR 49:230, because the same issues apply to both administrative regulations.

Subcommittee staff was requested to state the Subcommittee's concerns. Subcommittee staff stated that the Cabinet agreed to amend Section 2(2) of this administrative regulation to provide notice of loan application cycles to "all County Judge Executives and mayors of first and second class cities..." rather than providing notice to "all political subdivisions" as initially proposed by the Cabinet. The basis for this amendment is that notice to all political subdivisions would be unduly burdensome and expensive.

In its Statement of Consideration the Cabinet refused to insert the word "administrative" before the word "regulation", stating that the word "administrative" was unnecessary. The Cabinet stated that: (1) The word "regulation" was sufficiently clear standing alone; (2) Use of the word "administrative" added to the language of the administrative regulation; and (3) Use of the word "administrative" before "regulation" was confusing to a layman. Chairman Kerr stated that use of the word "administrative" before "regulation" was necessary, and that every other agency in state government, except this division, was complying with the Subcommittee's request.

Subcommittee staff pointed out that: (1) "administrative regulation" was the specific statutory definition established in KRS 13A.010(2); (2) the term must be used to clearly define what the agency is referring to; (3) "regulation" is not a specifically defined statutory term; (4) use of the term "regulation" could lead to a conflicting interpretation; (5) KRS Chapter 13A is the governing law on administrative regulations and does not recognize any term other than "administrative regulation"; and (6) the term "administrative regulation" would hardly confuse a layman.

The Cabinet agreed to insert the term "administrative" before the word "regulation" in 401 KAR 49:220.

A motion was approved by the subcommittee to add the

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word "administrative" before the word "regulation" in 401 KAR 49:220.

In its Statement of Consideration the Cabinet refused to insert an expanded tiering statement in its administrative regulation, that would state the legal rationale for not applying tiering. KRS 13A.210 and KRS 13A.230(1)(b) require an administrative body to explain why tiering was or was not used in an administrative regulation because tiering is generally encouraged to reduce costs. In the explanation of tiering the administrative body should include the State and Federal Constitutional justification for using or not using tiering. The statement that constitutional requirement of equal protection required members of a class to be treated equally is the explanation required by KRS 13A.210 for the conclusion that people in the same class must be treated equally.

The subcommittee had ruled on this issue at its December, 1992 meeting and required the insertion of the language recommended by Subcommittee staff to expand the tiering statement.

Chairman Kerr asked if the agency objected to adding the full legal and constitutional reason tiering was not applied to 401 KAR 49:220. The Cabinet stated they did not object.

A motion was approved by the subcommittee to add the language recommended by staff to the Cabinet's tiering statement in this administrative regulation.

This administrative regulation specifically establishes only the initial application cycle for loans which ends June 30, 1993. It requires the deadline for subsequent loan fund application cycles to be advertised in newspapers with statewide circulation.

Subcommittee staff had suggested that the initial application cycle be published in newspapers with statewide circulation. The Cabinet had agreed with the suggestion, but had refused to state in Section 2(2) that the administrative regulation would be amended to specify the subsequent application loan cycles when they were established by the Cabinet. The Cabinet felt that publication in the Administrative Register, numerous statewide meetings, and mailing of the notice of applications to all county judge executives and mayors of cities of the first and second class was sufficient.

The Cabinet stated that it intended to provide public notice of the initial application cycle after the administrative regulation was in effect. It did not want to publish the notice until the administrative regulation had completed the review procedure established by KRS Chapter 13A.

The Cabinet stated that notice of subsequent cycles in newspapers with statewide circulation was essential because it did not know the time frames or other details of subsequent cycles. Subcommittee staff explained that the cycles, or the period during which a loan application must be made, was a condition to be met in order for the application to be approved and the benefits of the program received. As a condition, KRS Chapter 13A required that it be contained in an administrative regulation. See, KRS 13A.010(2) and 13A.100.

The Cabinet agreed to amend the administrative regulation to include publication of the initial cycle and the statement relating to amendment with regard to future cycles.

Subcommittee staff had suggested that Section 2(2) be amended to bracket and strike through "These" before "subsequent" and insert "The initial and" in lieu thereof. The Cabinet agreed to this amendment.

The Cabinet had stated that it did not feel that KRS 424.130 is applied to these administrative regulations because

the public notices in newspapers with statewide circulation are not "required by law" to be published. Subcommittee staff pointed out that: (1) KRS 424.130 required publication if it was "required by law"; (2) an administrative regulation was law, and had the force and effect of law; (3) therefore, public notice is required by law.

Subcommittee staff pointed out that when a publication requirement in newspapers with statewide circulation is affirmatively stated in an administrative regulation, the advertisement is "required by law" within the meaning of KRS 424.130. KRS 424.130(1)(b) or (1)(d) applies in this matter. Subcommittee staff stated that the issue could be resolved by referencing KRS 424.130 in Section 2(2) of 401 KAR 49:220 after "statewide circulation" and before "and distributed".

The Cabinet agreed to this amendment. A motion was approved by the subcommittee adopting this amendment as well as the amendment recommended above as a part of this administrative regulation.

The Cabinet stated that the specific dates and times of subsequent cycles would be spelled out in the public notice. Subcommittee staff stated that the dates and times of subsequent application cycles should be inserted in the administrative regulation by the filing of an amended administrative regulation. At this point, the Cabinet requested that this administrative regulation, as amended, and 401 KAR 49:230 be deferred to the February 1993 meeting.

Chairman Kerr and Representative Bruce suggested that the Cabinet and Subcommittee staff meet to resolve these issues.

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

Division for Air Quality: General Standards of Performance

401 KAR 63:035. Gasoline dispensing facilities, stage II.

Department of Education: Office of Learning Programs Development: Elementary and Secondary Education Act
704 KAR 10:050. Authority to approve courses not in program of studies.

Public Service Commission: Utilities

807 KAR 5:001. Rules of procedure.

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.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:330. Psychiatric residential treatment facilities.

The Subcommittee adjourned at 11:45 a.m. until February 1, 1993 at 2 p.m. in Room 131 of the Capitol Annex.

AMENDMENTS & OTHER RELEVANT MATERIAL PERTAINING TO ADMINISTRATIVE REGULATIONS REVIEWED AT THIS MEETING ARE ATTACHED TO THE APPROPRIATE ADMINISTRATIVE REGULATIONS. ADMINISTRATIVE REGULATIONS AND ATTACHMENTS THERETO ARE SUBMITTED WITH THIS REPORT TO BE REFERRED TO THE APPROPRIATE JURISDICTIONAL COMMITTEE.

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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 HEALTH AND WELFARE Meeting of December 16, 1992

The Interim Joint Committee on Health and Welfare met on Wednesday, December 16, 1992, and submits this report:

The Committee voted to approve the following administrative regulations as referred: 201 KAR 7:015, 201 KAR 7:075, 201 KAR 29:015, 201 KAR 21:100, 904 KAR 2:016, 904 KAR 3:050, and 905 KAR 1:350. There were no objections.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Meeting of January 13, 1993

On January 13, 1993, the Committee reviewed the following administrative regulation, referred by the LRC January 8, and found that it complies with KRS Chapter 13A:

Finance and Administration Cabinet: 200 KAR 2:006
(Employees' reimbursement for travel).

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates H2

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 H12

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 H22

The Subject Index is a general index of regulations published in VOLUME 19 of the Administrative Register, and is mainly broken down by agency.

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VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

201 KAR 18:040E	3310	4-27-92
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

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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	
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803 KAR 2:320		
Amended	3529	10-7-92
804 KAR 9:040		
Amended	3536	(See VOLUME 19)

VOLUME 19

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1 KAR 6:020E	1048	9-18-92
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11 KAR 4:020E	677	7-9-92
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13 KAR 2:060E	1517	12-10-92
32 KAR 1:010E	859	8-19-92
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32 KAR 2:020E	1048	10-6-92
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32 KAR 2:030E	1049	10-6-92
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32 KAR 2:040E	1050	10-6-92
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32 KAR 2:050E	1052	10-6-92
Replaced	1527	1-4-93
32 KAR 2:060E	1052	10-6-92
Replaced	1528	1-4-93
32 KAR 2:070E	1053	10-6-92
Replaced	1529	1-4-93
32 KAR 2:080E	1054	10-6-92
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101 KAR 1:325E	860	8-18-92
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200 KAR 14:011E	362	7-14-92
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200 KAR 14:081E	363	7-14-92
Replaced	1066	10-22-92
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201 KAR 2:105E	862	8-18-92
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201 KAR 10:050E	4	5-18-92
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201 KAR 18:180E	1727	12-21-92
201 KAR 18:190E	1728	12-21-92
201 KAR 22:135E	1299	11-2-92
301 KAR 2:044E	864	8-18-92
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301 KAR 2:220E	1054	9-22-92
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401 KAR 49:009E	4	6-8-92
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401 KAR 50:037E	681	7-31-92
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405 KAR 7:001E	682	7-24-92
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405 KAR 7:091E	686	7-24-92
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405 KAR 7:092E	689	7-24-92
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405 KAR 12:020E	697	7-24-92
Replaced	939	11-23-92
415 KAR 1:050E	1299	11-9-92
415 KAR 1:060E	1301	11-9-92
415 KAR 1:070E	1303	11-9-92
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500 KAR 10:030E	1060	9-22-92
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501 KAR 6:060E	365	6-24-92
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601 KAR 40:020E	366	7-13-92
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603 KAR 3:060E	368	7-8-92
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603 KAR 5:110E	369	7-15-92
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603 KAR 5:300E	372	7-13-92
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702 KAR 1:001E	1520	12-10-92
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704 KAR 3:405E	1061	9-22-92	Amended	414	8-20-92
Replaced	1377	12-9-92	11 KAR 4:010		
704 KAR 3:440E	7	5-22-92	Repealed	921	12-9-92
Replaced	397	8-1-92	11 KAR 4:015	1014	12-9-92
780 KAR 3:020E	9	6-11-92	11 KAR 4:020		
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810 KAR 1:030	1730	12-29-92	Amended	921	12-9-92
901 KAR 5:050E	372	7-2-92	11 KAR 4:060	531	10-1-92
Replaced	298	8-28-92	11 KAR 5:001		
902 KAR 10:021E	372	7-2-92	As Amended	388	8-1-92
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902 KAR 10:035E	702	7-24-92	11 KAR 5:130		
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902 KAR 10:060E	372	6-30-92	Amended	1629	
Replaced	299	8-28-92	11 KAR 5:140		
902 KAR 10:121E	373	6-30-92	Amended	1630	
Replaced	300	8-28-92	11 KAR 5:145		
902 KAR 10:130E	373	6-30-92	Amended	1631	
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902 KAR 20:004E	374	7-10-92	Repealed	389	8-1-92
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902 KAR 20:320E	1313	10-16-92	Amended	433	10-1-92
902 KAR 20:330E	1324	10-16-92	11 KAR 12:020		
902 KAR 45:110E	378	6-30-92	Amended	435	10-1-92
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902 KAR 45:120E	379	6-30-92	Amended	436	10-1-92
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902 KAR 100:012E	10	6-4-92	Amended	437	10-1-92
Replaced	303	8-28-92	11 KAR 12:050		
902 KAR 105:020E	10	6-4-92	Amended	438	10-1-92
Replaced	733	8-28-92	11 KAR 12:060		
903 KAR 5:270E	379	6-30-92	Amended	439	10-1-92
Replaced	519	10-7-92	11 KAR 12:070		
903 KAR 5:290E	12	6-4-92	Amended	440	10-1-92
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904 KAR 2:006E	380	7-10-92	Repealed	532	10-1-91
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904 KAR 2:016E	1327	10-16-92	11 KAR 12:090		
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904 KAR 2:116E	1334	10-16-92	12 KAR 1:005		
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905 KAR 2:100E	703	7-24-92	12 KAR 1:007	1928	
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906 KAR 1:110E	12	5-22-92	Amended	1813	
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907 KAR 1:013E	14	6-4-92	Amended	1813	
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32 KAR 1:040			105 KAR 1:180		
Recodified from 801 KAR 1:020		8-5-92	Amended	967	
32 KAR 1:050			As Amended	1337	12-9-92
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32 KAR 1:060			Amended	968	
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32 KAR 1:070			105 KAR 1:215		
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32 KAR 1:090			105 KAR 1:260	1017	
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32 KAR 2:050	1236		As Amended	1065	10-22-92
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40 KAR 2:060	537		As Amended	1340	11-30-92
As Amended	1065	11-9-92	201 KAR 2:210	1240	
45 KAR 1:060	1015		Withdrawn		11-24-92
As Amended	1337	11-12-92	Resubmitted	1694	
101 KAR 1:325			201 KAR 2:215	1462	
Amended	961	12-9-92	As Amended	1742	
101 KAR 1:335			201 KAR 7:015	1241	12-16-92
Amended	1633		201 KAR 7:075		
101 KAR 1:365			Amended	1097	12-16-92
Amended	80		201 KAR 10:050		
As Amended	866	10-8-92	As Amended	1068	10-30-92
101 KAR 1:375			201 KAR 11:350	1695	
Amended	81		201 KAR 12:105		
As Amended	867	10-8-92	Amended	1825	
101 KAR 2:046			201 KAR 16:010		
As Amended	389	8-1-92	Amended	1826	
101 KAR 2:066			201 KAR 16:015	1932	
Amended	1634		201 KAR 16:020		
102 KAR 1:185			Amended	1828	
Amended	1097		201 KAR 16:030		
As Amended	1529	1-4-93	Amended	1830	
105 KAR 1:020			201 KAR 16:040		
Amended	962	12-9-92	Amended	1831	
105 KAR 1:040			201 KAR 16:050		
Amended	1398		Amended	1832	
105 KAR 1:120			201 KAR 16:060		
Amended	1400		Amended	1833	
Withdrawn		12-28-92	201 KAR 16:070	1932	
105 KAR 1:150					
Amended	965	12-9-92			

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
201 KAR 17:090			301 KAR 1:075		
Amended	447	10-8-92	Amended	454	9-23-92
201 KAR 17:091			Amended	1837	
Amended	449	10-8-92	301 KAR 1:085		
201 KAR 18:040			Amended	455	9-23-92
As Amended	1069	10-30-92	301 KAR 1:160		
201 KAR 18:180	1697		Amended	456	9-23-92
201 KAR 18:190	1697		301 KAR 1:200		
201 KAR 20:070			Amended	457	9-23-92
Amended	1637		Amended	1838	
201 KAR 20:090			301 KAR 2:044		
Amended	1638		Amended	788	
201 KAR 20:095			As Amended	1074	11-9-92
Amended	1639		301 KAR 2:048	1937	
201 KAR 20:110			301 KAR 2:140		
Amended	1641		Amended	974	
201 KAR 20:200			Withdrawn		10-22-92
As Amended	18	7-4-92	Amended	1403	
201 KAR 20:205			301 KAR 2:220		
Repealed	20	7-4-92	Amended	977	
201 KAR 20:210			As Amended	1340	11-23-92
Repealed	20	7-4-92	301 KAR 2:250		
201 KAR 20:215			Amended	1840	
As Amended	18	7-4-92	301 KAR 3:021		
201 KAR 20:220			Repealed	391	7-22-92
As Amended	20	7-4-92	301 KAR 3:022		
201 KAR 20:225			As Amended	391	7-22-92
Amended	1642		301 KAR 3:090	541	9-23-92
201 KAR 20:230			301 KAR 4:001		
Amended	1643		Amended	1842	
201 KAR 20:250			301 KAR 4:020		
Amended	1644		Amended	982	
201 KAR 20:310			As Amended	1344	11-23-92
Amended	1645		301 KAR 4:061	1941	
201 KAR 20:400	1242		302 KAR 16:080		
201 KAR 21:095	1243		As Amended	712	8-27-92
Withdrawn		12-8-92	302 KAR 20:058		
Resubmitted	1934		Amended	459	
201 KAR 21:100	1243		As Amended	1075	11-9-92
As Amended	1532	12-16-92	302 KAR 34:060	840	
201 KAR 22:070			As Amended	1076	11-9-92
Amended	450		401 KAR 4:300	1941	
As Amended	868	10-8-92	401 KAR 5:010		
201 KAR 22:135			Amended	415	
Amended	83		As Amended	717	8-27-92
As Amended	868	10-8-92	401 KAR 5:300	1943	
Amended	1402		401 KAR 8:030		
201 KAR 23:020			Amended	419	8-27-92
Amended	1100	12-11-92	401 KAR 8:101	1946	
201 KAR 27:008	1935		401 KAR 31:010		
201 KAR 27:012	1936		Amended	84	
201 KAR 29:015	1244	12-16-92	Amended	735	9-23-92
201 KAR 29:020	834	11-9-92	401 KAR 31:040		
201 KAR 29:030	835		Amended	94	
As Amended	1070	11-9-92	Amended	744	9-23-92
201 KAR 29:040	836		401 KAR 31:060		
As Amended	1071	11-9-92	Amended	106	9-23-92
201 KAR 29:050	838		401 KAR 31:170		
As Amended	1072	11-9-92	Amended	109	
201 KAR 29:060	839		Amended	754	9-23-92
As Amended	1073	11-9-92	401 KAR 34:020		
201 KAR 31:010	1019	11-24-92	Amended	117	9-23-92
202 KAR 1:010	1464		401 KAR 34:050		
As Amended	1743		Amended	120	9-23-92
301 KAR 1:015			401 KAR 34:060		
Amended	451	9-23-92	Amended	123	
Amended	1835		Amended	761	9-23-92
301 KAR 1:020			401 KAR 34:070		
Amended	452	9-23-92	Amended	132	9-23-92
301 KAR 1:060			401 KAR 34:190		
Amended	453	9-23-92	Amended	137	9-23-92

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
401 KAR 35:020			401 KAR 59:675	1254	
Amended	143	9-23-92	Withdrawn		12-10-92
401 KAR 35:050			401 KAR 59:705	1256	
Amended	146	9-23-92	Amended	1595	
401 KAR 35:070			401 KAR 59:725	1257	
Amended	149	9-23-92	Amended	1596	
401 KAR 35:190			401 KAR 59:740	1258	
Amended	154	9-23-92	Amended	1596	
401 KAR 36:030			401 KAR 59:745	1260	
Amended	160		Amended	1597	
Amended	769	9-23-92	401 KAR 59:750	1261	
401 KAR 37:010			Amended	1697	
Amended	162		401 KAR 59:755	1262	
Amended	770	9-23-92	Amended	1598	
401 KAR 37:030			401 KAR 61:085		
Amended	169		Amended	1116	
Amended	776	9-23-92	Amended	1598	
401 KAR 37:040			401 KAR 63:031		
Amended	172	9-23-92	Amended	1118	
401 KAR 37:050			401 KAR 63:035	1466	
Amended	175	9-23-92	Amended	1789	
401 KAR 38:010			405 KAR 1:007	544	
Amended	176	9-23-92	As Amended	1077	11-9-92
401 KAR 38:020			405 KAR 3:007	546	
Amended	179		As Amended	1077	11-9-92
Amended	778	9-23-92	405 KAR 7:001		
401 KAR 38:025	1948		Amended	460	
401 KAR 38:040			Amended	925	
Amended	182	9-23-92	As Amended	1345	11-23-92
401 KAR 38:050			405 KAR 7:030		
Amended	187	9-23-92	Amended	464	11-9-92
401 KAR 38:060			405 KAR 7:090		
Amended	191	9-23-92	Repealed	686	7-24-92
401 KAR 38:070			405 KAR 7:091	547	
Amended	195	9-23-92	Amended	928	
401 KAR 45:010			As Amended	1348	11-23-92
As Amended	22	6-24-92	405 KAR 7:092	551	
401 KAR 45:025	1950		Amended	931	
401 KAR 45:070			As Amended	1352	11-23-92
As Amended	23	6-24-92	405 KAR 8:001		
401 KAR 47:025	1952		Amended	467	
401 KAR 49:010			As Amended	1360	11-23-92
Repealed	780	9-23-92	405 KAR 8:030		
401 KAR 49:011	330		As Amended	24	6-24-92
Amended	780	9-23-92	405 KAR 8:040		
401 KAR 49:040			As Amended	34	6-24-92
Amended	198		405 KAR 10:001		
Amended	782	9-23-92	Amended	473	
401 KAR 49:060			Withdrawn		10-26-92
Repealed	780	9-23-92	405 KAR 12:001		
401 KAR 49:070			Amended	475	
Repealed	780	9-23-92	Withdrawn		10-26-92
401 KAR 49:220	1245		405 KAR 12:020		
Amended	1579		Amended	477	
401 KAR 49:230	1247		Amended	939	11-23-92
Amended	1580		405 KAR 16:001		
401 KAR 50:037	542	11-9-92	Amended	482	
401 KAR 51:010			Withdrawn		10-26-92
Amended	1101		405 KAR 18:001		
Amended	1581		Amended	487	
401 KAR 51:052			Withdrawn		10-26-92
Amended	1105		405 KAR 20:001		
Amended	1585		Amended	492	
401 KAR 59:175			Withdrawn		10-26-92
Amended	1114		405 KAR 24:001		
Amended	1593		Amended	495	
401 KAR 59:430	1249		Withdrawn		10-26-92
Amended	1593		415 KAR 1:050	1471	
401 KAR 59:460	1251		Amended	1792	
Amended	1594		415 KAR 1:060	1473	
401 KAR 59:635	1253		Amended	1793	
Amended	1595				

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
415 KAR 1:070	1476		501 KAR 4:060		
Amended	1795		Amended	1865	
415 KAR 1:080	1479		501 KAR 4:070		
Amended	1797		Amended	1867	
415 KAR 1:090	1482		501 KAR 4:100		
Amended	1799		Amended	1867	
415 KAR 1:100	1485		501 KAR 4:120		
415 KAR 1:120	1486		Amended	1868	
Amended	1800		501 KAR 4:140		
500 KAR 1:010			Amended	1869	
Amended	1121	1-4-93	501 KAR 5:001	1955	
500 KAR 1:020			501 KAR 6:020		
Amended	1122	1-4-93	Amended	200	9-10-92
500 KAR 1:030			Amended	790	11-9-92
Amended	1124	1-4-93	Amended	1647	
500 KAR 10:001	332		501 KAR 6:030		
Withdrawn		9-4-92	Amended	202	9-10-92
Resubmitted	1020		Amended	498	10-8-92
As Amended	1365	12-9-92	Amended	983	12-9-92
500 KAR 10:010	333		Amended	1125	1-4-93
Withdrawn		9-4-92	Amended	1649	
Resubmitted	1020		Amended	1871	
Withdrawn		11-5-92	501 KAR 6:040		
500 KAR 10:020	333		Amended	500	10-8-92
Withdrawn		9-4-92	Amended	792	11-9-92
Resubmitted	1021		501 KAR 6:050		
As Amended	1366	12-9-92	Amended	1873	
500 KAR 10:030	334		501 KAR 6:060		
Withdrawn		9-4-92	Amended	204	9-10-92
Resubmitted	1022		Amended	501	10-8-92
As Amended	1366	12-9-92	Amended	793	11-9-92
500 KAR 10:040	335		Amended	984	12-9-92
Withdrawn		9-4-92	501 KAR 6:070		
Resubmitted	1022		Amended	502	10-8-92
As Amended	1367	12-9-92	Amended	986	12-9-92
501 KAR 1:060	1954		Amended	1406	
501 KAR 2:020	1488		501 KAR 6:110		
As Amended	1745		Amended	205	9-10-92
501 KAR 2:030	1489		Amended	1874	
As Amended	1746		501 KAR 6:120		
501 KAR 2:040	1490		Amended	987	12-9-92
As Amended	1746		Amended	1127	1-4-93
501 KAR 2:050	1490		501 KAR 6:130		
501 KAR 2:060	1491		Amended	207	9-10-92
As Amended	1746		Amended	1129	1-4-93
501 KAR 3:010			Amended	1407	
Amended	1844		501 KAR 6:140		
501 KAR 3:030			Amended	794	11-9-92
Amended	1845		Amended	1408	
501 KAR 3:040			501 KAR 6:160		
Amended	1846		Amended	989	12-9-92
501 KAR 3:050			501 KAR 7:040		
Amended	1847		Amended	1876	
501 KAR 3:060			501 KAR 7:050		
Amended	1850		Amended	1877	
501 KAR 3:090			501 KAR 7:060		
Amended	1852		Amended	1879	
501 KAR 3:100			501 KAR 7:120		
Amended	1853		Amended	1880	
501 KAR 3:120			501 KAR 10:010	1956	
Amended	1854		501 KAR 10:020	1957	
501 KAR 3:130			501 KAR 10:030	1958	
Amended	1856		501 KAR 10:040	1959	
501 KAR 3:150			501 KAR 10:050	1961	
Amended	1857		501 KAR 10:060	1964	
501 KAR 4:010			501 KAR 10:070	1966	
Amended	1860		501 KAR 10:080	1967	
501 KAR 4:040			501 KAR 10:090	1968	
Amended	1860		501 KAR 10:100	1969	
501 KAR 4:050			501 KAR 10:110	1970	
Amended	1862		501 KAR 10:120	1971	
			501 KAR 10:130	1972	

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 10:140	1973		603 KAR 5:075		
600 KAR 1:070			Amended	235	
Amended	208		As Amended	894	10-8-92
As Amended	869	10-8-92	603 KAR 5:105		
600 KAR 2:010			Amended	237	
Amended	1410		As Amended	896	10-8-92
600 KAR 3:010			603 KAR 5:110		
Amended	209		Amended	507	
As Amended	869	10-8-92	Amended	944	
600 KAR 4:010			As Amended	1367	12-1-92
Amended	1130		603 KAR 5:111		
As Amended	1532	1-4-93	Repealed	369	7-15-92
600 KAR 4:020			603 KAR 5:112		
Amended	1134		Amended	239	
As Amended	1536	1-4-93	As Amended	897	10-8-92
601 KAR 1:005			603 KAR 5:260	335	
Amended	225		As Amended	899	10-8-92
As Amended	885	10-8-92	603 KAR 5:270	338	
Amended	1411		As Amended	901	10-8-92
601 KAR 1:015			603 KAR 5:300	561	
Amended	227		Died*		9-10-92
As Amended	887	10-8-92	603 KAR 5:301	1699	
601 KAR 1:016			701 KAR 5:035	654	
Amended	229		As Amended	902	10-1-92
As Amended	889	10-8-92	701 KAR 5:075	1023	
601 KAR 1:025			As Amended	1370	12-9-92
Amended	1413		701 KAR 5:085	655	
As Amended	1747		As Amended	903	10-1-92
601 KAR 9:130			702 KAR 1:001		
Amended	503	10-8-92	Amended	1418	
601 KAR 9:145			702 KAR 1:005		
Repealed	503	10-8-92	Recodified as 704 KAR 3:450		8-19-92
601 KAR 11:040			702 KAR 1:035		
As Amended	45	7-4-92	As Amended	392	
Amended	1460		As Amended	1081	11-9-92
As Amended	1749		702 KAR 3:190		
601 KAR 40:020			Amended	511	
Amended	506		As Amended	903	10-1-92
Amended	942	11-4-92	702 KAR 3:245	1492	
Amended	1882		702 KAR 3:250		
602 KAR 50:010			Amended	512	10-1-92
Amended	796		702 KAR 3:260	1024	
As Amended	1077	11-4-92	As Amended	1370	12-9-92
602 KAR 50:020			702 KAR 5:010		
Amended	799		Amended	1884	
As Amended	1080	11-4-92	702 KAR 5:080		
602 KAR 50:030			Amended	990	
Amended	800	11-4-92	As Amended	1371	12-9-92
602 KAR 50:050			702 KAR 5:120		
Amended	801	11-4-92	Amended	513	
602 KAR 50:060			As Amended	904	10-1-92
Amended	802	11-4-92	702 KAR 7:010		
602 KAR 50:070			Amended	992	
Amended	803	11-4-92	As Amended	1374	12-9-92
602 KAR 50:080			702 KAR 7:050		
Repealed	804	11-4-92	As Amended	392	8-1-92
602 KAR 50:090			702 KAR 7:065		
Amended	804	11-4-92	Amended	514	10-1-92
602 KAR 50:100			Amended	1419	
Amended	805	11-4-92	703 KAR 4:010	1700	
602 KAR 50:110			703 KAR 4:020		
Amended	806	11-4-92	Recodified from 704 KAR 3:006		9-29-92
As Amended			703 KAR 4:030		
602 KAR 50:120			Recodified from 704 KAR 3:007		9-29-92
Amended	807	11-4-92	703 KAR 4:040	1702	
603 KAR 3:060	560		703 KAR 4:050	1980	
Amended	944	11-4-92	704 KAR 3:006		
603 KAR 3:070	1975		Recodified as 703 KAR 4:020		9-29-92
603 KAR 5:070			704 KAR 3:007		
Amended	231		Recodified as 703 KAR 4:030		9-29-92
As Amended	891	10-8-92			

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
704 KAR 3:035			781 KAR 1:020		
As Amended	394	8-1-92	Amended	1428	
Amended	1885		Amended	1802	
704 KAR 3:325			781 KAR 1:030		
As Amended	395	8-1-92	Amended	517	
704 KAR 3:345			Amended	949	11-9-92
Amended	515		Amended	1432	
Amended	947		781 KAR 1:060		
As Amended	1081	11-9-92	Amended	1434	
704 KAR 3:390			801 KAR 1:005		
Amended	994		Recodified as 32 KAR 1:020		8-5-92
As Amended	1375	12-9-92	801 KAR 1:010		
704 KAR 3:405			Recodified as 32 KAR 1:030		8-5-92
As Amended	1025		801 KAR 1:020		
704 KAR 3:440			Recodified as 32 KAR 1:040		8-5-92
As Amended	397	8-1-92	801 KAR 1:040		
704 KAR 3:450			Recodified as 32 KAR 1:050		8-5-92
Recodified from 702 KAR 1:005		8-19-92	801 KAR 1:070		
Amended	1420	12-9-92	Recodified as 32 KAR 1:060		8-5-92
704 KAR 7:056			801 KAR 1:080		
As Amended	656		Recodified as 32 KAR 1:070		8-5-92
704 KAR 7:110		11-9-92	801 KAR 1:090		
Amended	905		Recodified as 32 KAR 1:080		8-5-92
704 KAR 10:050			801 KAR 1:110		
Amended	1494		Recodified as 32 KAR 1:090		8-5-92
704 KAR 20:005			801 KAR 2:010		
Amended	1801		Recodified as 32 KAR 2:010		8-5-92
704 KAR 20:05			803 KAR 2:015		
Amended	1427		Amended	242	
As Amended	1138		As Amended	906	
704 KAR 20:165		1-4-93	Withdrawn		10-6-92
Amended	1538		803 KAR 2:301		
As Amended	1139		Amended	1887	
704 KAR 20:210		1-4-93	803 KAR 2:306		
Amended	1140		Amended	250	
As Amended	1540		As Amended	914	
704 KAR 20:585			Withdrawn		10-6-92
Amended	1264		803 KAR 2:310		
As Amended	1599		Amended	252	
704 KAR 20:660		10-1-92	As Amended	915	
725 KAR 2:020			Withdrawn		10-6-92
Repealed	48	7-4-92	803 KAR 2:313		
725 KAR 2:060			Amended	255	
As Amended	48	7-4-92	As Amended	918	
725 KAR 2:070			Withdrawn		10-6-92
As Amended	49	7-4-92	803 KAR 2:317		
745 KAR 1:035			Amended	257	
Amended	996		As Amended	918	
As Amended	1379	12-9-92	Withdrawn		10-6-92
760 KAR 1:010			803 KAR 2:320		
As Amended	1267		Amended	1888	
760 KAR 1:020		1-4-93	803 KAR 2:403		
As Amended	1540		Amended	1892	
760 KAR 1:030		1-4-93	803 KAR 25:011		
As Amended	1269		Amended	808	
760 KAR 1:040		1-4-93	Withdrawn		10-6-92
As Amended	1541		Amended	1436	
760 KAR 1:050		1-4-93	803 KAR 25:012		
As Amended	1270		Withdrawn		10-6-92
760 KAR 1:060		1-4-93	Resubmitted	1495	
As Amended	1542		803 KAR 25:091		
780 KAR 2:100			Amended	1026	
As Amended	50	7-4-92	As Amended	1396	
780 KAR 2:110			803 KAR 25:095		
As Amended	52	7-4-92	Withdrawn	842	
780 KAR 2:120			Resubmitted		10-6-92
As Amended	52	7-4-92	Amended	1496	
780 KAR 3:070			803 KAR 25:096		
Amended	1650		Withdrawn	1805	
780 KAR 6:060			Resubmitted	843	
Amended	1655		Amended		10-6-92
780 KAR 9:130			804 KAR 1:130		
As Amended	339			1498	
	721	8-20-92		1806	
				658	9-14-92

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Regulation Number	19 Ky.R Page No.	Effective Date	Regulation Number	19 Ky.R Page No.	Effective Date
804 KAR 4:310	1981		815 KAR 20:020		
804 KAR 5:070			Amended	295	
Amended	424		As Amended	730	9-10-92
As Amended	721	9-1-92	Amended	997	
804 KAR 9:040			As Amended	1383	12-8-92
As Amended	919	9-14-92	815 KAR 20:060		
805 KAR 5:030	845		Amended	999	
As Amended	1084	11-9-92	As Amended	1385	12-8-92
805 KAR 7:030			815 KAR 20:070		
Amended	1141		Amended	1002	
806 KAR 2:070			As Amended	1387	12-8-92
Amended	258	9-10-92	815 KAR 20:071		
806 KAR 2:110	1028		Amended	1190	
As Amended	1379	12-9-92	As Amended	1555	1-4-93
806 KAR 12:095	340		815 KAR 20:074		
Amended	783		Amended	1003	
As Amended	1380	12-9-92	As Amended	1389	12-8-92
806 KAR 13:120	1982		815 KAR 20:075		
806 KAR 17:066			Amended	1004	
Amended	259	9-10-92	As Amended	1389	12-8-92
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