# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MONDAY, MARCH 1, 1993

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**MEETING NOTICE:** The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on March 1 and 2, 1993. See **tentative** agenda on pages 1997-2000 in this Administrative Register.

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

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

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# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Division of Local Facilities

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### Office of School Administration and Finance

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## PUBLIC PROTECTION AND REGULATION CABINET

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### Department of Insurance

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905 KAR 2:120. Child care facility health and safety standards. (Amended After Hearing)
905 KAR 2:130. Child care discipline. (Amended After Hearing)

Department for Medicaid Services

**Medicaid Services**

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

## 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
200 KAR 6:045E

Studies have been conducted by various agencies, institutions, and health organizations which conclude that there is evidence that the health of persons living and working in close proximity to others who smoke may be affected by the secondary impact of cigarette, cigar or pipe smoke. Due to concern that such findings may arguably be correct, I issued a directive to cabinet secretaries and other agency heads to implement a reasonable smoking policy in state-owned and occupied buildings. To facilitate this policy, and pursuant to authority vested in the Finance and Administration Cabinet to control the use of state-owned and leased property, the Secretary of the Finance and Administration Cabinet has directed that an administrative regulation be drafted to provide for the designation of smoking and nonsmoking areas in state-owned and leased space occupied by executive branch agencies. In order to immediately implement this administrative regulation, the secretary has requested that this administrative regulation be promulgated by emergency. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 26, 1993.

BRERETON JONES, Governor
W. PATRICK MULLOY, II, Secretary

**FINANCE AND ADMINISTRATION CABINET**
**Department for Facilities Management**

**200 KAR 6:045E. Control of smoking in state-owned buildings and leased space occupied by executive branch agencies.**

RELATES TO: KRS 56.463
STATUTORY AUTHORITY: KRS 56.463(4), (8)
EFFECTIVE: January 26, 1993
NECESSITY AND FUNCTION: KRS 56.463(4) vests in the Finance and Administration Cabinet the power to control the use of any real property owned or otherwise held by the Commonwealth of Kentucky, or any state agency. KRS 56.463(8) authorizes the Finance and Administration Cabinet to adopt regulations necessary to govern, among other things, the control of property to which KRS 54.463 is applicable. This regulation provides for the control of cigars, cigarette, and pipe smoking by employees or visitors to state-owned or otherwise held real property under the control of the executive branch of Kentucky state government. The purpose of this regulation is to accommodate the needs of nonsmokers and smokers and, to the extent feasible, provide a designated smoking area in each building.

Section 1. Smoking of cigars, cigarettes, and pipes by employees and visitors shall be permitted in state-owned buildings or leased space, occupied by executive branch agencies, only in areas that are designated as smoking areas.

Section 2. Subject to the guidelines contained in Section 3 of this administrative regulation, the identification of appropriate smoking and nonsmoking areas shall be the responsibility of agency heads in central offices and by office heads in field offices. Employee suggestions and complaints shall be considered in designating smoking and nonsmoking areas. Smoking and nonsmoking areas shall be designated by appropriate signage as determined by the Finance and Administration Cabinet.

Section 3. (1) Except as provided in this section, in designating smoking and nonsmoking areas, agency and office heads shall not, unless special circumstances exist, designate as a smoking area, employee work stations/cubicles, elevators, hallways, stairwells, supply rooms, restrooms, conference rooms, reception areas, computer rooms, libraries, patient care areas, training rooms, and other areas of state-owned facilities or leased space occupied by executive branch agencies, which are used by all employees or visitors.

(2) A private office may be designated as a smoking area if devices designed to remove secondary smoke are installed, and smoking does not occur when nonsmokers are present.

(3) Smoking shall only be permitted in a public area of a state facility which has been specifically designated and appropriately marked as a smoking area.

(4) If there is space available for two (2) break rooms, one (1) may be designated for smoking and the other designated for nonsmoking.

(5) Separate smoking and nonsmoking areas shall be designated in state-owned or operated dining facilities, including the State Office Building and Capitol Annex Building cafeterias, and state resort park dining rooms.

Section 4. No executive branch employee shall be involuntarily assigned to a work station which has been designated a smoking area.

Section 5. Devices which are designed to remove secondary smoke from the air shall be installed in designated smoking areas.

W. PATRICK MULLOY, II, Secretary
APPROVED: January 26, 1993
FILED WITH LRC: January 26, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapter 196, the department needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected policy must be added immediately as 803 KAR 2:320 requires the department to develop and implement guidelines intended to protect employees from potential workplace hazards connected with exposure to bloodborne pathogens. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on January 15, 1993 in accordance with KRS Chapter 13A.

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

**JUSTICE CABINET**
**Department of Corrections**

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

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: January 21, 1993 at 3 p.m.
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised January 15, 1993 [~~November 17, 1992~~], are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

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JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: January 15, 1993
FILED WITH LRC: January 21, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:005E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:005E. Definitions.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the administrative regulations concerning the selection process.

Section 1. Definitions. (1) "Cadet trooper" shall mean an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and conditionally employed as a trainee.

(2) "Register" shall mean the list of persons eligible for selection as a cadet trooper.

(3) "Appointment" shall mean selection by the commissioner of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(4) "Candidate" shall mean an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(5) "Applicant" shall mean a person who submits an employment application for the position of cadet trooper and who participates in the selection process.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:015E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary

administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:015E. Qualifications.**

RELATES TO: KRS 16.040
STATUTORY AUTHORITY: KRS 16.040, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 sets forth the basic qualifications for appointment as an officer. KRS 16.080 vests in the commissioner the authority to adopt administrative regulations for enlistment. This administrative regulation establishes the procedure to be used to determine whether applicants possess the basic qualifications.

Section 1. Applicants shall submit a birth certificate to establish that they meet the age qualification of KRS 16.040(2)(a).

Section 2. Applicants shall submit to a background investigation to establish the good moral character qualification of KRS 16.040(2)(b).

Section 3. Applicants who are offered conditional employment as cadet troopers shall submit to a medical examination to establish the good health qualification of KRS 16.040(2)(b).

Section 4. Applicants who are citizens of another country at the time of application shall submit naturalization certificates prior to employment to establish the citizenship qualification of KRS 16.040(2)(c).

Section 5. Applicants who are citizens of another state at the time of application shall submit Kentucky motor vehicle operator's licenses prior to employment to establish the residency qualification of KRS 16.040(2)(c).

Section 6. Applicants shall submit high school diplomas or GED equivalency certificates to establish the education qualification of KRS 16.040(2)(d). Five (5) years of full-time employment as a law enforcement officer or police administrator shall suffice to meet the education qualification.

Section 7. All persons appointed as officers shall be physically able to safely perform essential job tasks, with or without reasonable accommodation, including but not limited to reading, writing, operating a police pursuit vehicle at high speed under all weather and lighting conditions, running, climbing stairs and fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing a handgun with either hand and reloading, and firing and reloading a shotgun. To determine these physical qualifications, a medical examination shall be conducted of applicants who are offered employment as cadet troopers. The medical examination may include physical tests to determine ability to perform the essential job tasks. Applicants hired as cadet troopers shall be required to perform simulated essential job tasks during basic training at the Kentucky State Police Academy. Inability to safely perform essential job tasks, with or without reasonable accommodation, shall be grounds for disqualification or dismissal.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:025E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:025E. Disqualification.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the grounds for disqualification.

Section 1. Applicants will be disqualified from further participation in the selection process or removed from the register if it is determined that:

(1) An applicant does not meet any one (1) of the qualifications for appointment as an officer;

(2) An applicant has made a false statement of material fact on the application, or in response to any questions or requests for information during the selection process;

(3) An applicant has used or attempted to use political influence, coercion or bribery to secure an advantage in any phase of the selection process;

(4) An applicant has cheated during the course of any examination required during the selection process, or has attempted to gain an advantage over other applicants by any dishonest or intentionally misleading act or omission;

(5) An applicant has failed to comply with any instructions from the department relating to the selection process;

(6) An applicant has ben dismissed for cause from any public agency, or has resigned while charges of misconduct were pending;

(7) An applicant has been convicted of a felony or any crime of moral turpitude;

(8) An applicant is a current user of a controlled substance, unless prescribed by a physician;

(9) An applicant is addicted to any controlled substance or intoxicant;

(10) An applicant has more than five (5) driver demerit points against his operator's license;

(11) An applicant tests positive for an unlawful controlled substance after a blood or urine analysis.

Section 2. If probable cause exists to believe that an applicant has committed an act or omission which if true would result in disqualification, the department may defer any further processing of the application, or may condition further processing upon successful completion of a polygraph examination conducted by a licensed examiner employed by the department.

Section 3. An applicant who is disqualified or upon whose application further processing is deferred shall be informed within ten (10) working days of the reason for the disqualification or deferral, and of the right to appeal to the State Police Personnel Board.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:035E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:035E. Application.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department. This administrative regulation requires applicants to complete a written application form.

Section 1. Applications shall be made on forms prescribed by the commissioner and provided by the department. The application form was adopted December 1, 1992, and is hereby incorporated by reference. Application forms may be inspected and copied by contacting the Kentucky State Police Personnel Section, 919 Versailles Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. Failure to submit the application in a timely manner or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:045E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:045E. Written examination.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes a written examination.

Section 1. The written examination shall be practical in nature and shall be designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. Examinations shall be administered at such times and places as designated by the commissioner. The commissioner may direct that examinations be conducted regionally if he finds regional examinations to be convenient and practicable.

Section 3. An applicant may take the examination only one (1) time in any twelve (12) month period.

Section 4. Applicants who submit an incomplete or inaccurate application shall not be allowed to take the examination.

Section 5. Applicants who have failed to meet the age or educational requirements shall not be permitted to take the written examination.

Section 6. Examinations shall be rated impartially, and each applicant shall be advised of his score. The written examination score shall be combined with the oral interview score to determine placement on the register, with the written examination score constituting forty (40) percent of the final score and the oral interview score constituting sixty (60) percent.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:055E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Ameri-

cans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:055E. Oral interview.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) Applicants who have completed the written examination shall be eligible to participate in the oral interview component of the selection process. Oral interviews shall be conducted by oral interview panels appointed by the commissioner, who shall determine the number of applicants to be interviewed. The commissioner shall determine the number of applicants to be interviewed based upon the number of available vacant funded positions and projections based upon past selection processes of the number of applicants necessary to process in order to fill the available positions. Applicants shall be selected for interviews in rank order as determined by their scores on the written examination. The commissioner may deviate from the rank order of score only when necessary to correct a manifest imbalance in the representation of minorities or women in the pool of qualified applicants.

(2) Each oral interview panel shall consist of three (3) members, at least one (1) of which shall be a female or a member of a minority group, and at least one (1) of which shall be a sworn officer. To ensure fairness and consistency, panel members shall receive training related to interview methodology and equal employment opportunity law.

(3) Members of the oral interview panels shall disclose each instance in which they are personally acquainted with an applicant to be interviewed or with any member of the applicant's immediate family, and that applicant shall be interviewed by another panel.

Section 2. (1) Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of six (6) categories by each panel member. The categories shall be:

(a) Maturity, emotional stability and ego strength;
(b) Conscientiousness and persistence;
(c) Social boldness and venturesomeness;
(d) Self-assuredness;
(e) Self-sufficiency; and
(f) Self-discipline.

For each category, the applicant shall be scored on a range from zero to five (5).

(3) The oral interview score shall constitute sixty (60) percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of his score and ranking, and shall be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process by consenting to a background investigation.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:065E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:065E. Background investigation.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 direct the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment. This administrative regulation establishes a background investigation as a component of the selection process.

Section 1. Applicants who have completed the written examination and the oral interview and who have requested to remain in the selection process shall be required to submit to a background investigation.

Section 2. Background investigations shall be conducted by individuals selected by the commissioner. Applicants who have lived in another state shall be investigated by an appropriate law enforcement agency in that state, at the request of the commissioner. Applicants shall not be considered for employment until the background investigation is completed. Reports of all background investigations shall remain confidential and shall be filed in headquarters.

Section 3. Background investigators may discontinue an investigation and recommend disqualification or deferral when the investigation reveals facts or circumstances which constitute grounds for disqualification or deferral.

Section 4. Background investigators may express opinions about the suitability of applicants for employment, but their opinions shall be expressed in writing and supported by specific factual reasons. The commissioner may give such weight to an opinion by an investigator as he deems appropriate.

Section 5. All reports of background investigations shall be confidential. Information obtained as a result of a background investigation shall not be disseminated. Reports of background investigations shall be filed at Kentucky State Police Headquarters in a secure file to which only the commissioner or persons specifically designated by the commissioner shall have access.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:075E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:075E. Register.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which lists vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. The commissioner shall establish and maintain a register of the names of applicants eligible for selection to the position of cadet trooper. The commissioner shall determine, based upon the needs of the department, projected attrition, authorized strength levels and number of applicants, the date of establishment of the register and the number of eligible applicants to be placed on the register.

Section 2. Applicants who have completed the written examination, the oral interview, the background investigation, and who have not been disqualified shall be placed on the register in rank order, as determined by the combined score of the written examination and the oral interview. Applicants who receive the same score shall be ranked by random draw.

Section 3. The commissioner shall select candidates for employment as cadet troopers in the order of placement on the register, but may deviate from that order when necessary to correct a manifest underrepresentation of minorities or women in any cadet class, or when the background investigation reveals that a candidate is less suitable for employment than the candidate who occupies the next position on the register.

Section 4. The register shall be continuous, and when an applicant's name is placed on the register as a candidate for selection the applicant may not again participate in the selection process for a period of twelve (12) months. Any candidate who is not selected for employment within a period of twenty-four (24) months from the date of placement on the register shall have his name removed from the register.

Section 5. The commissioner may remove a candidate from the register for the following reasons:
(1) Upon receipt of reliable information indicating grounds for disqualification or deferral;
(2) When the candidate cannot be located by postal authorities;
(3) When the candidate declines an offer of employment, fails to respond to an offer of employment, or indicates that he or she no longer wishes to be considered for employment;
(4) Upon the expiration of a period of twenty-four (24) months from the date of placement on the register.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:085E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:085E. Medical examination.**

RELATES TO: KRS 16.040
STATUTORY AUTHORITY: KRS 16.040, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 provides that officers must be in good health and directs the commissioner to prescribe minimum physical requirements for appointment and to conduct tests and require physical examinations to determine the fitness of each applicant. This administrative regulation establishes the tests and examinations which are to be conducted.

Section 1. Applicants selected to be cadet troopers and offered probationary employment as trainees shall be required to submit to medical examinations to determine fitness to safely perform essential job tasks with or without reasonable accommodation. The medical examination shall be conducted after an offer of employment is made but before applicants report for training. The offer of employment shall be conditioned upon successful completion of the medical examination..

Section 2. Medical examinations shall be conducted by physicians selected by the department. The physicians shall render opinions to the department as to whether applicants who have been offered employment are physically fit to safely perform essential job tasks, with or without reasonable accommodation, and as to whether applicants have any medical condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. As part of the medical examination, applicants shall be required to provide complete medical history information and to answer questions related to the examination. Information and records related to the medical examinations shall be confidential.

Section 4. The medical examination may include tests conducted by an occupational therapist under the direction of the examining

physician, if necessary to determine an applicant's ability to safely perform essential job tasks with or without reasonable accommodation.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:095E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

DEPARTMENT OF STATE POLICE

**502 KAR 45:095E. Psychological assessment.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 require the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment as officers. This administrative regulation establishes a psychological assessment.

Section 1. An applicant selected to be a cadet trooper and offered probationary employment as a trainee shall be required to submit to a psychological assessment, which shall be conducted after an offer of employment is made but prior to completion of training. Continued employment shall be conditioned upon successful completion of the psychological assessment.

Section 2. The psychological assessment shall be conducted by a psychologist selected by the department. The psychologist shall render an opinion to the department as to whether an applicant who has been offered employment is psychologically fit to safely perform the essential job tasks of an offer with or without reasonable accommodation, and as to whether an applicant has any psychological condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. Records related to the psychological assessment shall be confidential.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:105E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

DEPARTMENT OF STATE POLICE

**502 KAR 45:105E. Appointment.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.050 authorizes the Commissioner of the Department of State Police to appoint persons as officers as necessary for the efficient administration of the department. KRS 16.050 directs appointments to vacancies to be made from lists of eligibles. This administrative regulation establishes the method of appointment.

Section 1. The commissioner in his discretion shall determine, based on the needs of the department, projected attrition, and authorized strength levels, the number of candidates to be offered employment as cadet troopers. This offer of employment shall be subject to the condition that the candidate submits to a medical and psychological examination and is found fit to perform safely the essential job tasks of an officer, with or without reasonable accommodation.

Section 2. Candidates who are offered employment as cadet troopers shall be required to undergo training at the Kentucky State Police Academy prior to appointment as officers. During the training period, a cadet trooper may be dismissed at any time, with or without cause.

Section 3. Cadet troopers who successfully complete academy training shall be appointed as officers and given the constitutional oath of office. Officers shall be on probation for a period of one (1) year from and after the date of appointment, and may be dismissed from employment at any time during the probationary period, with or without cause, pursuant to KRS 16.140(11).

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:115E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary

administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:115E. Appeals.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.050 directs that the State Police Personnel Board shall hear appeals from applicants. This administrative regulation establishes the procedure for appeals.

Section 1. Applicants who are disqualified or deferred and who believe that the disqualification or deferral was unlawful or that they have been discriminated against because of their race, religion, sex, age, disability, ethnic origin or political affiliation may initiate an appeal to the board by filing a statement of appeal in the office of the commissioner.

Section 2. The statement of appeal shall be in writing and shall be dated, signed, and sworn. It shall set forth with particularity the specific acts or omissions that are alleged to be discriminatory or otherwise unlawful. The statement of appeal shall be filed within thirty (30) days of the date of the act or omission which forms the basis for the appeal, or, if more than thirty (30) days have elapsed, within ten (10) days of the date that the applicant received notice or first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement of appeal by the commissioner, legal counsel for the department shall file a response which shall be served upon the applicant appellant. No later than sixty (60) days thereafter, the board shall consider the statement of appeal and the response. The board may rule upon the appeal based upon the statement of appeal and response, or in its discretion may order a hearing, with at least ten (10) days prior notice to the applicant appellant.

Section 4. The board in its discretion may employ hearing officers who are attorneys to conduct the hearings and make advisory findings of fact, conclusions of law and recommendations. At the hearing, the board shall not be bound by rules of order, evidence, or procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6) months of the date of filing of the statement of appeal, and shall enter an order which sets forth the appropriate relief, except that no party to the appeal may recover attorney's fees.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:116E

In order to recruit and select qualified candidates for employment as cadet troopers with the Department of State Police during the current fiscal year, it is necessary to begin the selection process immediately. The administrative regulations by which selection has been accomplished in the past have been preempted by the Americans with Disabilities Act and must be repealed. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administration regulation was filed with the Regulations Compiler on February 9, 1993.

BRERETON C. JONES, Governor
BILLY G. WELLMAN, Commissioner, Secretary and Chairman

**DEPARTMENT OF STATE POLICE**

**502 KAR 45:116E. Repeal of 502 KAR Chapter 45.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: February 9, 1993
NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation repeals the former administrative regulations relating to selection of officers.

Section 1. The following administrative regulations are repealed: 502 KAR 45:010, 502 KAR 45:020, 502 KAR 45:030, 502 KAR 45:040, 502 KAR 45:050, 502 KAR 45:060, 502 KAR 45:070, 502 KAR 45:080, 502 KAR 45:090, 502 KAR 45:100, 502 KAR 45:110, 502 KAR 45:120, 502 KAR 45:125, and 502 KAR 45:130.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
704 KAR 3:035E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary in order to revise the planning process to facilitate school planning. This process must be implemented immediately to ensure timely planning for the 1993-94 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the LRC.

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

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Regional Service Centers**

**704 KAR 3:035E. Annual professional development plan.**

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070
EFFECTIVE: January 21, 1993
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 objections; 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, [~~/~~] 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 from the Division of Professional Development, 17th [~~18th~~] 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 21, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:028E

This emergency administrative regulation is being amended to comply with a federal mandate for coverage of x-ray services by providing that the services will be covered when provided by a facility which is licensed to provide radiological services and which meets the requirements of 42 CFR 440.30. This regulation must be promulgated on an emergency basis to comply with the federal mandate in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about February 1, 1993.

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

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:028E. Other laboratory and x-ray services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.30, 493, 42 USC 1396(d)

EFFECTIVE: February 2, 1993

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 provisions relating to other laboratory and x-ray services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and medically needy.

Section 1. Covered Services. (1) Laboratory services provided by a participating independent laboratory shall be limited to those procedures for which the laboratory is certified under Medicare when prescribed by a physician or dentist.

(2) X-ray services (radiological services which include but are not limited to x-rays, ultrasound, computer assisted tomography and magnetic resonance imaging) shall be limited to those procedures provided by a facility licensed to provide radiological services and which meets the requirements of 42 CFR 440.30 as limited herein:

(a) The facility shall participate in the Medicare Program;

(b) The procedures shall be ordered by a licensed physician, oral surgeon or dentist;

(c) The services shall be provided under the direction or supervision of a licensed physician; and

(d) The facility shall meet the requirements of 42 CFR Part 493 with regard to laboratory certification, registration or other accreditation as appropriate.

Section 2. The amendments to Section 1 of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992 [~~July 1, 1988~~].

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: February 2, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:029E

This emergency administrative regulation is being amended to comply with a federal mandate of reimbursement of x-ray services by providing for payment for radiological services when such services are provided by facilities which are licensed to provide radiological services and meet the requirements of 42 CFR 440.30. This regulation must be promulgated on an emergency basis to comply with the federal mandate in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about February 1, 1993.

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

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:029E. Payments for other laboratory and x-ray services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.30, 493, 42 USC 1396(d)
EFFECTIVE: February 2, 1993
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 method of determining amounts payable by the cabinet for other laboratory and x-ray services.

Section 1. Laboratory Services. The cabinet shall reimburse participating independent laboratories, outpatient surgical clinics, renal dialysis centers, and outpatient hospital clinics for covered services rendered on the basis of the allowable payment rates set by Medicare.

Section 2. X-ray Services. Covered x-ray services (radiological services) provided to eligible Medicaid recipients in accordance with the limitations described in 907 KAR 1:028 shall be paid for at usual and customary charges up to sixty (60) percent of the fixed upper limit per procedure for physicians.

Section 3. [~~2.~~] The amendments to Section 2 [~~1~~] of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992 [~~July 1, 1988~~].

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: February 2, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:031E

This emergency administrative regulation is being amended to remove the urban/rural distinction for skilled nursing costs and make them subject to the Medicare upper limit, effective February 1, 1993. This action must be taken on an emergency basis to implement the change in a timely manner. This emergency administrative regulation shall be replaced by an ordinary regulation filed with the Regulations Compiler on or about February 1, 1993.

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

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:031E. Payments for home health services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.70, 447.325, 42 USC 1396a-d
EFFECTIVE: January 21, 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 home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services (effective July 1, 1992 using cost data submitted by the home health agency

provider on the annual Medicaid home health agency cost report), taking into consideration the upper limit shown in Section 2 of this administrative regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX Home Health Reimbursement Manual[~~, revised July 1, 1991, which is hereby incorporated by reference. The Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost~~].

(a) A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual.

(b) [:] The cost containment incentive payment shall not be subject to retrospective settlement.

(2) Payments made at the interim rate (except for incentive payments) shall be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this administrative regulation. The Medicaid final rates (except for incentive payments) shall not exceed federally established upper limits for Medicare.

(3) The Cabinet for Human Resources Title XIX Home Health Reimbursement Manual, revised February 1, 1993, is incorporated by reference.

(a) The Home Health Reimbursement Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(b) A fee shall be charged for the Home Health Reimbursement Manual not to exceed the approximate cost of copying and materials.

Section 2. Application of Upper Limits. (1) Publicly operated home health agencies (except new facilities as shown in Section 5 of this administrative regulation) shall be reimbursed at full allowable cost but shall be subject to the Medicare upper limits.

(2) Payments for [~~other~~] agencies other than publicly operated home health agencies (except payments for disposable medical supplies, as shown in Section 4 of this administrative regulation), and incentive payments as shown in Section 1 of this administrative regulation shall not exceed a prospective upper limit which shall be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that are subject to the upper limits.

(3) [~~with~~] Facilities shall be placed in an urban or rural array based on the facility location for the following cost centers or disciplines: [~~skilled nursing,~~] speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services.

(a) The upper limit for the skilled nursing cost center shall be the Medicare upper limit. A determination as to whether a county is urban or rural shall be made taking into account usual standard metropolitan statistical areas.

(b) [~~The~~] Arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) shall be permitted.

(c) For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective with regard to services provided on or after July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment unless enrolled as a participating durable medical equipment provider.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Medicaid maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate may be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1990. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Medicare maximum payment rate, the Medicaid maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Requests for Reconsideration and Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) Request for reconsideration. A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations.

(a) A [~~This~~] request for reconsideration shall be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. A [~~The~~] request for workpapers pertaining to audit adjustments to the home health agency's cost report shall not extend the forty-five (45) day time limit.

(b) If the home health agency operator [~~provider~~] fails to request reconsideration of [~~appeal~~] the audited cost report within the forty-five (45) days, the audited cost report shall be final and shall not be reopened [~~subject to reopening~~] unless the cabinet determines that there is suspected fraud or misrepresentation.

(c) A [~~The~~] request for reconsideration [~~appeal~~] shall indicate which adjustments the home health agency wishes reconsidered [~~to appeal~~]. A blanket request for reconsideration of [~~to appeal~~] the cost report shall not be accepted.

(d) Program/vendor conference. Upon receipt of the request for reconsideration [~~review~~], the division shall determine the need for a program/vendor conference and shall contact the home health agency to arrange a conference [~~if needed~~].

1. If a program/vendor [~~The~~] conference is [~~, if~~] needed, the conference shall be held within sixty (60) days of [~~the program's~~] receipt of the home health agency's request for review unless delayed due to extenuating circumstances.

2. Regardless of the program decision, the provider shall be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved in [~~and~~] the [~~program~~] decision.

(e) Following reconsideration [~~review~~] of the matter, the Director of the Division of Reimbursement Operations shall notify the home health agency in writing of the action to be taken by the division within twenty (20) days of receipt of the request for reconsideration [~~review~~] or the date of the program/vendor conference, whichever is later [~~except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of~~

~~the issue~~].

(f) The twenty (20) day period for notification in paragraph (e) of this subsection may be extended by the program when necessary to secure additional information for resolution of the issue.

(2) Appeal to the reimbursement review panel. If the Director of Reimbursement Operations' decision is unsatisfactory, the home health agency may [~~then~~] appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services.

(a) The reimbursement review panel [~~which~~] shall include one (1) member of the Division of Reimbursement Operations, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the commissioner, with the designated member to serve as chairperson.

(b) A [~~The~~] request for review by the reimbursement review panel shall [~~must~~] be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations.

(c) A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of a written request for the appeal. The question shall be heard by the panel.

(d) The review panel shall issue a binding decision on the issue within thirty (30) days of the hearing unless the review panel determines that [~~of the issue, except that~~] additional time is needed [~~may be taken as necessary~~] to secure further information or clarification pertinent to the resolution of the issue.

(e) [~~In carrying out the intent and purposes of the program~~] The review panel may consider [~~take into consideration~~] extenuating circumstances to provide [~~which may be considered in order to provide for~~] equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit shall take precedence over the Medicare audit.

Section 10. Implementation Date. The amendments to this administrative regulation as shown herein shall be effective with regard to services provided on or after February 1, 1993.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 21, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:061E

This emergency administrative regulation is being amended to provide that ramp (as well as lift) equipped vans will be considred appropriate for provision of speciality individual carrier services in the Medicaid transportation program; this action is considered necessary to comply with the Americans With Disabilities Act. This regulation must be promulgated on an emergency basis to comply with the federal requirements in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about February 1, 1993.

BRERETON JONES, Governor
LEONARD E. HELLER, Secretary

## CABINET FOR HUMAN RESOURCES
## Department for Medicaid Services

### 907 KAR 1:061E. Payments for medical transportation.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: February 2, 1993
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid 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 medical transportation services.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions apply:

(1) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services.

(2) "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.

(3) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). The [~~Such~~] segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the cabinet.

(4) "Private automobile vendor" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program as a provider of ambulance services, if willing to accept private automobile vendor rates.

(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment [~~ordinarily~~] required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier shall [~~must~~] be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

(6) "Waiting time" means that period of time following provision of

transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

Section 2. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate shall be the amount arrived at by combining the following component costs, as applicable:

(a) The base rate, which shall be set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 3. Commercial Transportation Vendors. The cabinet shall reimburse participating commercial transportation vendors at the normal passenger rate charged to the general public, taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time. The following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(1) The upper limit shall be the usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(2) The upper limit shall be the usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(3) The upper limit shall be the usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(4) The upper limit shall be the usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(5) The upper limit for trips of fifty-one (51) miles or above shall be the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Vendors. (1) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two (2) dollars per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three (3) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. Private automobile vendors shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile vendors shall be computed on the basis of a maximum allowable fee of five (5) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twelve (12) cents per mile plus two (2) dollars for waiting time would not equal the three (3) dollars or five (5) dollars allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in this section requires the cabinet to pay the amounts specified in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount shall be paid. Toll charges shall be reimbursable when incurred.

(4) Waiting time shall be a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pickup as though the client were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section.

Section 5. Noncommercial Group Carriers. The cabinet shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

Section 6. Specialty Individual Carriers. (1) Participating specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(2) ~~[For services provided on or after July 1, 1990,]~~ Program maximums are:

(a) Nonambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twenty-five (25) dollars for the first patient plus ten (10) dollars for each additional nonambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient(s) is transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twelve (12) dollars and fifty (50) cents per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b) of this subsection, mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty individual carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate

methods of transportation.

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by participating specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 8. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner.

Section 9. Meals and Lodging. [~~Effective with regard to services provided on or after July 1, 1991,~~] The upper limits for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the cabinet shall be as follows:

(1) Standard area:

(a) Meals: breakfast - $4 per day; lunch - $5 per day; dinner - $11 per day; and

(b) Lodgings: actual cost up to $40 per day if known; if not known, $40 per day.

(2) High rate area:

(a) Meals: breakfast - $5 per day; lunch - $6 per day; dinner - $15 per day; and

(b) Lodgings: actual cost up to $55 per day if known; if not known, $55 per day.

Section 10. Limitations. Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the cabinet.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: February 2, 1993 at 9 a.m.

## REGULATIONS AS AMENDED BY PROMLUGATING BODY AND REVIEWING SUBCOMMITTEE

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

**11 KAR 3:001 Definitions.**

RELATES TO: KRS 164.740, 164.744(1), 164.748(1), (3) (14), 164.753(2), 164.766, 8 USC 1101(a)(22), 10 USC Chapters 2, 106, 107, 20 USC 421-429, 1070a, 1070b, 1070c, 1078, 1078-1, 1078-2, 1078-3, 1087a,1087aa-1087ii, 1095-1, 37 USC Chapter 2, 38 USC Chapters 30, 31, 32, 35, PL 97-376 §156, PL 96-342 §903

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal act. This **administrative** regulation sets forth general definitions applicable to one (1) or more **administrative** regulations in this chapter.

Section 1. The following definitions apply to all authority insured student loan programs:

(1) "Academic year" means:

(a) A period of at least thirty (30) weeks of instructional time in which a full-time student is expected to complete at least twenty-four (24) semester hours or thirty-six (36) quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(b) At least 900 clock hours at a participating institution which measures academic progress in clock hours.

(2) "Applicable interest rate" means the maximum annual interest rate that a lender may charge on an authority insured loan.

(3) The definition of "authority" is governed by KRS 164.740(1).

(4) "Borrower" means a student or parent to whom a federal Stafford loan, a federal SLS loan, a federal PLUS loan, or a federal Consolidation loan is made.

(5) "Clock hour" means the equivalent of:

(a) A fifty (50) to sixty (60) minute class, lecture or recitation;

(b) A fifty (50) to sixty (60) minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty (60) minutes of preparation in a program of study by correspondence.

(6) "College work study program (CWS)" means the part-time employment program for students authorized by Part C of the federal Act (42 USC §2751 - 2756b).

(7) "Co-maker" means one (1) of two (2) individuals who are joint borrowers on a federal PLUS Program loan and who are equally liable for repayment of the loan.

(8) "Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for:

(a) 180 days for a loan repayable in monthly installments; or

(b) 240 days for a loan repayable less frequent installments.

(9) "Defense loan" means a loan made before July 1, 1972, under Title II of the National Defense Education Act (20 USC 421-429).

(10) "Dependent student" means any student who does not qualify as an independent student (see independent student).

(11) "Direct loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(12) "Disbursement" means the transfer of loan proceeds by a participating lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

(13) The definition of "disposable pay" is governed by Section 488A(d) of the federal Act (20 USC 1095-1).

(14) The definition of "eligible student" is governed by KRS 164.740(7).

(15) The definition of "endorser" is governed by KRS 164.740(8).

(16) "Enrolled" means the status of a student who:

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the participating institution he **[**~~or she~~**]** is attending; or

(b) Has been admitted into a correspondence study program and has submitted one (1) lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

(17) "Escrow agent" means the authority acting in a capacity in which it agrees to receive the proceeds of an insured student loan as an agent of a participating lender for the purpose of transmitting those proceeds to the borrowers.

(18)(a) "Estimated cost of attendance" means, for loans disbursed prior to July 1, 1993, the tuition and fees applicable to a student, plus the participating institution's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses shall not include the purchase of a motor vehicle. The expenses may include, but are not limited to, reasonable transportation and commuting costs, costs for room, board, books, and supplies, the insurance premium for the loan, and if applicable, the origination fee for the loan.

(b) "Estimated cost of attendance" means, for loans disbursed on or after July 1, 1993.

1. Tuition and fees normally assessed a student carrying the same academic workload as determined by the participating institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

2. An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the participating institution on at least a half-time basis, as determined by the participating institution at which such student is enrolled;

3. An allowance (as determined by the participating institution) for room and board costs incurred by the student, which shall be not less than $1,500 for a student without dependents residing at home with parents, the amount normally assessed most of the institution's residents for room and board for students without dependents residing in institutionally owned or operated housing, or an allowance of not less than $2,500 for all other students based on the expenses reasonably incurred by the students for room and board;

4. For a student enrolled in an academic program of study abroad approved for credit by the student's home institution, reasonable costs associated with the study (as determined by the participating institution at which such student is enrolled);

5. For a student with one (1) or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that the allowance shall not exceed the reasonable cost in the community in which the student resides for the kind of care provided, and the period for which dependent care is required includes, but is not limited to, class time, study time, field work, internships, and commuting time;

6. For a student with a disability, an allowance (as determined by the participating institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

7. For a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, except that the financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of telecommunication, but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment; and

8. For a student placed in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the participating institution at which such student is enrolled).

(19) "Estimated financial assistance" means the estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from federal, state, institutional or other scholarship, grant, work, or loan programs, including but not limited to:

(a) Any Social Security benefits paid to, or on account of, the student that would not be paid if he **was** ~~[or she were]~~ not a student;

(b) Any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits received under United States Code Title 10 chapters 2, 106, and 107; Title 37 chapter 2; Title 38 chapters 30, 31, 32, and 35; PL 97-376, section 156; and PL 96-342, section 903; and

(c) Other scholarship, grant, or loan assistance;

(d) The estimated amount of other federal student financial aid, including but not limited to Pell Grants and assistance under the SEOG, federal work-study, and federal Perkins Loan programs, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(e) Loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

(20) The definition of "federal act" is governed by KRS 164.740(9).

(21) "Federal Consolidation Loan Program" means the loan program authorized by section 428C of the federal Act **(20 USC Section 1078-3)**.

(22) "Federal PLUS Program" means the loan program authorized by section 428B of the federal Act **(20 USC Section 1078-2)**.

(23) "Federal Supplemental Loans for Students (SLS) Program" means the loan program authorized by section 428A of the federal Act **(20 USC Section 1078-1)** and formerly called the ALAS Program.

(24) "Foreign school" means a school not located in a state.

(25) "Full-time student" means:

(a) A student enrolled in a participating institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or social studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational program of study (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than twenty-four (24) clock-hours per week or twelve (12) semester or quarter hours of instruction, or its equivalent.

(26) "Grace period" means the period that begins on the day on which a federal Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating institution and ends on the day that the repayment period begins. See also "postdeferment grace period".

(27) "Graduate or professional student" means a student who:

(a) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(b) Has completed the equivalent of at least three (3) years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(c) Is not receiving aid under Title IV of the federal Act **(20 USC Sections 1070 through 1099c-1)** as an undergraduate student for the same period of enrollment.

(28) "Guarantee agency" means a state or private nonprofit organization that has an agreement with the secretary to administer a loan guarantee program under the federal Act.

(29) "Guaranteed Student Loan (GSL) Program" means the student loan program, which has been redesignated as the Robert T. Stafford Federal Student Loan program, authorized by Part B of Title IV of the federal Act **(20 USC 1071(c))**.

(30) "Half-time student" means a student who is enrolled in a participating institution, is carrying an academic workload that amounts to at least one-half (1/2) the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

(31) "Holder" means a participating lender in possession of authority insured student loan.

(32) "Income Contingent Loan (ICL) Program" means the student loan program authorized by Part D of the federal Act (20 USC 1087a, et seq.).

(33) "Independent student" means any individual who:

(a) Is twenty-four (24) years of age or older by December 31 of the award year;

(b) Is an orphan or ward of the court;

(c) Is a veteran of the Armed Forces of the United States;

(d)1. Is a graduate or professional student; and

2. For award years beginning prior to July 1, 1993, declares that he ~~[or she]~~ will not be claimed as a dependent for income tax purposes by his ~~[or her]~~ parents for the first calendar year of the award year;

(e)1. Is a married individual; and

2. For award years beginning prior to July 1, 1993, declares that he ~~[or she]~~ will not be claimed as a dependent for income tax purposes by his ~~[or her]~~ parents for the first calendar year of the award year;

(f) Has legal dependents other than a spouse;

(g) For award years beginning prior to July 1, 1993, is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes by his ~~[or her]~~ parents for the two (2) calendar years preceding the award year and demonstrates total self-sufficiency for those two (2) years by total annual resources of at least $4,000; or

(h) Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(34) The definition of "insured student loan" is governed by KRS 164.740(12).

(35) "Legal guardian" means an individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his ~~[or her]~~ financial resources for the support of that person.

(36) The definition of "loan" is governed by KRS 164.740(13).

(37) The definition of "loan guarantee" is governed by KRS 164.740(14).

(38) "National Defense Student Loan program" means the student loan program authorized by Title II of the National Defense Education Act of 1958 (20 USC 421-429).

(39) "National Direct Student Loan (NDSL) Program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) between July 1, 1972, and October 16, 1986.

(40) "National of the United States" means:

(a) A citizen of the United States; or

(b) As defined in the Immigration and Nationality Act, 8 USC 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(41) "One (1) year training program" means a program which is at least:

(a) Twenty-four (24) semester or trimester hours or units, or thirty-six (36) quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) 900 clock hours in a correspondence program.

(42) "Origination relationship" means a special relationship between a participating institution and a lender, in which the lender delegates to the institution, or to an entity or individual affiliated with the institution, substantial functions or responsibilities normally performed by lenders before making loans.

(43) "Parent" means a student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

(44) The definition of "participating institution" is governed by KRS 164.740(15).

(45) The definition of "participating lender" is governed by KRS 164.740(16).

(46) "Pell Grant program" means the grant program authorized by subpart 1 of Part A of the federal Act (20 USC 1070a).

(47) "Perkins loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under the National Direct Student Loan program.

(48) "Perkins Loan program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) after October 16, 1986.

(49) "Postdeferment grace period" means for an insured student loan made prior to October 1, 1981, a period of six (6) consecutive months being on the day following the last day of an authorized deferment period.

(50) "Recognized equivalent of a high school diploma" means:

(a) A general education development (GED) certificate; or

(b) A state certificate received by a student after the student has passed a state authorized examination which the state recognizes as the equivalent of a high school diploma.

(51) "Regular student" means a person who is enrolled or accepted for enrollment at a participating institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

(52) "Robert T. Stafford Federal Student Loan program" means the student loan program authorized by Part B of the federal Act, consisting of subsidized and unsubsidized loans authorized by sections 428 **(20 USC Section 1078)** and 428H **(20 USC Section 1078-8)** of the federal Act, and includes loans previously made under the guaranteed student loan program.

(53) The definition of "secretary" is governed by KRS 164.740(20).

(54) "Six (6) month training program" means:

(a) A program which is at least:

1. Sixteen (16) semester or trimester hours or units, or twenty-four (24) quarter hours or units, at an institution using credit hours or units to measure academic progress;

2. 600 clock hours of supervised training at an institution using clock hours to measure academic progress; or

3. 600 clock hours in a correspondence program;

(b) A program which the secretary determines is at least a six (6) month training program on the basis of:

1. A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)1 through 3 of this subsection; and

2. The secretary's ratification of that accrediting agency's determination.

(55) "State" means each state of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(56) "State Student Incentive Grant (SSIG) program" means the grant program authorized by subpart 4 of Part A of the federal Act (20 USC 1070c, et seq.).

(57) "Subsidized Federal Stafford Student loan" means a loan qualifying for payment of an interest subsidy on behalf of the borrower under section 428 of the federal Act **(20 USC Section 1078)**.

(58) "Supplemental Educational Opportunity Grant (SEOG) program" means the grant program authorized by subpart 3 of Part A of the federal Act (20 USC 1070b, et seq.).

(59) "Totally and permanently disabled" means the inability of a borrower to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(60) "Undergraduate student" means a student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four (4) academic years, or is up to five (5) academic years in length and shall be designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four (4) academic years.

(61) "Unsubsidized federal Stafford student loan" means a student loan authorized under section 428H of the federal Act **(20 USC Section 1078-8)**.

(62) "U.S. citizen or national" means:

(a) A citizen of the United States; or

(b) A person defined in the Immigration and Nationality Act (8 USC 1101, (a)(22)) who, though not a citizen of the United States, owes permanent allegiance to the United States.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: December 11, 1992
FILED WITH LRC: December 15, 1992 at noon

## KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

### 11 KAR 3:015. Borrower eligibility.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 20 USC §1078, §1078-1, §1078-2, §1078-3, §1087kk

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. The **administrative** regulation is necessary to prescribe the eligibility of borrowers and students who would benefit from authority insured student loans.

Section 1. Student Eligibility. Except as provided in Section 12 of this administrative regulation, a student is eligible to borrow or benefit from assistance for any academic year, whether or not the student has already obtained a first baccalaureate degree, under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs if the student:

(1)(a) Is a regular student enrolled or accepted for enrollment as at least a half-time student in a degree, certificate, or other eligible

program (including a program of study abroad approved for credit by the participating institution at which the student is enrolled) leading to a recognized educational credential at a participating institution; or

(b) Is, for one, consecutive twelve (12) month period, enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a course of study necessary for enrollment in an eligible program; or

(c) Is enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a program at a participating institution necessary for a professional credential or certification from a state that is required for employment as a teacher in an elementary or secondary school in that state;

(2) Is not enrolled in either an elementary or secondary school;

(3)(a) Has a high school diploma or its recognized equivalent; or

(b)1. Is above the age of compulsory school attendance in the state in which the participating institution he **[~~or she~~]** is attending is located; and

2. Has the ability to benefit from the training offered by that institution, according to the requirements of Section 2 of this administrative regulation;

(4)(a) Is a U.S. citizen or national; or

(b) Provides evidence from the U.S. Immigration and Naturalization Service that he **[~~or she~~]**:

1. Is a permanent resident of the United States; or

2. Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(c) Is a permanent resident of the Trust Territory of the Pacific Islands;

(5) If currently enrolled, is maintaining satisfactory progress in his **[~~or her~~]** course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of Section 3 of this administrative regulation;

(6) Has filed with the participating institution a statement of selective service registration status in accordance with Section 4 of this administrative regulation;

(7) Is a national of the United States, if enrolled or accepted for enrollment in a foreign school; and

(8) Meets the following conditions, if enrolled in a flight school program at a participating institution:

(a) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(b) Has completed ground school training or is taking it concurrently with flight training;

(c) Holds a private pilot's certificate or has sufficient flight hours to qualify for that certificate; and

(d) Holds at least a Class II medical certificate.

Section 2. Students Who Are Not High School Graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs, the student shall meet one (1) of the following standards:

(1)(a) The student shall take an independently administered examination (approved by the secretary on the basis of compliance with standards for development, administration, and scoring as the secretary may prescribe in **administrative** regulations), and shall achieve a score, specified by the secretary, demonstrating that the student can benefit from the education or training being offered; or

(b) The student shall be determined as having the ability to benefit from the education or training in accordance with a process that a state may prescribe, which shall be effective for purposes of this section six (6) months after the date the process is submitted to the secretary, unless the secretary disapproves the process, taking into account the effectiveness of the process in enabling students without high school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing the process, and the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions;

(2) Enrollment prior to July 1, 1991. A student who was admitted to a participating institution for a period of enrollment beginning prior to July 1, 1991 and continues to be enrolled as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs only if the student:

(a)1. Before admission, was administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he **[~~or she~~]** has applied; and

2. Demonstrated that aptitude on that test; or

(b) Receives a GED before the earlier of the student's certification or graduation from his **[~~or her~~]** program of study, or the completion of the student's first academic year of that program of study; or

(c) Enrolls in and successfully completes a remedial or developmental educational program of not more than one (1) academic year that is prescribed by the institution, if the student is counseled before admission, or does not demonstrate the aptitude necessary to complete successfully the educational program to which he **[~~or she~~]** has applied on the test described in paragraph (2)(a)1 of this section.

Section 3. Satisfactory Progress. For the purpose of Section 1(5) of this administrative regulation, a student shall be considered to be maintaining satisfactory progress if, for a student who has not received assistance under the subsidized Robert T. Stafford Federal Student Loan, the federal PLUS, or the federal SLS programs, for a period of enrollment beginning before July 1, 1987, the participating institution:

(1) Reviews the student's academic progress at the end of each academic year, or its equivalent, as determined by the institution; and

(2) Determines that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that:

(a) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(b) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by:

1. The death of a relative of the student;

2. An injury or illness of the student; or

3. Other special circumstances; and

(3) Determines, in the case of a student who was not making satisfactory academic progress in accordance with subsection (2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

Section 4. Statement of Registration Status. (1) Unless the participating institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service, a student who is applying for a subsidized or unsubsidized federal Stafford loan or a federal SLS loan, or who will benefit from a loan under the federal PLUS program, shall file a statement of registration status with the participating institution.

(2) Until a student files a statement of registration status required

pursuant to subsection (1) of this section, the participating institution shall not, for any period of instruction:

(a) Disburse funds to the student under any authority insured student loan program; or

(b) Certify the institutional portion of the authority insured student loan application.

(3) In the statement of registration status, the student shall certify either that he **[~~or she~~]** is registered with Selective Service or that, for a specified reason, he **[~~or she~~]** is not required to be registered. This requirement shall not apply to a student who is:

(a) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

1. The Citadel, Charleston, South Carolina;
2. North Georgia College, Dahlonega, Georgia;
3. Norwich University, Northfield, Vermont; or
4. Virginia Military Institute, Lexington, Virginia;

(b) A commissioned officer of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(c) Unable to present himself **[~~or herself~~]** for registration for reasons beyond his **[~~or her~~]** control, such as being hospitalized, incarcerated, or institutionalized.

(4)(a) Except as provided in paragraph (b) of this subsection, a student required under subsection (1) of this section to file a statement of registration status shall do so once for each academic year. If the student's status under registration law changes during the academic year after he has completed the statement of registration status, the student shall not be required to file a new statement for that year.

(b) A participating institution may waive the requirement that a student file a statement of registration status once for each academic year if:

1. The institution already has on file a statement of registration status for that student; and

2. The student's status under registration law has not changed since the institution received the most recently filed statement of registration status.

(c) A participating institution which waives the requirement that a student file the statement of registration status is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if:

1. The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

2. The institution had conflicting information about whether the student was required to register, and its determination that the student was not required to register was not reasonable in the light of all available information.

(d) An institution which accepts a statement of registration status from a student is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if the institution:

1. Has information that conflicts with the student's statement; and

2. Its acceptance of the student's representation on the statement regarding his status was not reasonable in light of all the available information.

Section 5. Eligible Borrower. (1) Student borrower. A student is eligible to borrow a subsidized and unsubsidized federal Stafford loan and a federal SLS program loan, if the student:

(a) Meets the requirements of Section 1 of this administrative regulation; and

(b) Provides his **[~~or her~~]** Social Security number; and

(c) Authorizes the participating institution in writing to pay directly to the holder of the loan that portion of any refund of school charges that is allocable to the loan; and

(d) Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he **[~~or she~~]** does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e) Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he **[~~or she~~]** is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation;

(g) As determined by the participating institution that he **[~~or she~~]** attends, except as provided in Section 9 of this administrative regulation, has not borrowed:

1. In excess of the annual loan limits under the ICL, subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, or federal SLS programs in the same academic year for which he **[~~or she~~]** has applied for assistance under any authority insured student loan program; and

2. In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, or federal Consolidation Loan programs;

(h) Is not serving in a medical internship or residency program;

(i) Except for a graduate or professional student:

1. Has received a determination of eligibility or ineligibility for a Pell Grant for the period of enrollment, and, if determined to be eligible, filed an application for a Pell Grant for such enrollment period; or

2. Has filed an application with the Pell Grant processor for the participating institution for the enrollment period, and received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a Pell Grant.

(j) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause;

(k) Meets the additional requirements provided in Sections 9 and 10 of this administrative regulation applicable to the type of loan sought by the student; and

(2) Parent borrower. A parent is eligible to receive a federal PLUS Program loan if the parent:

(a) Is borrowing to pay for the educational costs of a dependent student who meets all of the qualifications set forth in Section 1 of this administrative regulation;

(b) Provides his **[~~or her~~]** Social Security number;

(c) Meets the qualifications pertaining to citizenship and residency status set forth in Section 1(4) of this administrative regulation;

(d)1. Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he **[~~or she~~]** does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs; and

2. Except as provided in Section 6 of this administrative regulation, the student for whom a parent is borrowing does not owe, and certifies that he **[~~or she~~]** does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e)1. Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he **[~~or she~~]** is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs; and

2. Except as provided in Section 7 of this administrative regulation, the student for whom a parent is borrowing is not in default, and

certifies that he [~~or she~~] is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation; and

(g) For loans on which the first disbursement is made on or after July 1, 1993, does not have an adverse credit history;

(h) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause.

Section 6. Refund of a Grant or Scholarship Overpayment. A student shall owe a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he [~~or she~~] is eligible to receive or use. Notwithstanding Section 5(1)(d) and (2)(d) of this administrative regulation, an otherwise eligible student or an otherwise eligible parent borrower who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment shall be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs under the following conditions:

(1) Pell Grant overpayment.

(a) If an institution makes a Pell Grant overpayment to a student, that otherwise eligible student or an otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) if the institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(b) If an institution makes a Pell Grant overpayment to a eligible student as a result of its own error, and cannot eliminate the overpayment under paragraph (a) of this subsection, the otherwise eligible student or otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the student acknowledges the overpayment and agrees, in writing, to repay it within six (6) months.

(2) SEOG or SSIG overpayment. If an institution makes an SEOG or SSIG overpayment to a student, that otherwise eligible student or otherwise eligible borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

Section 7. Default on a Loan. Notwithstanding Section 5(1)(e) and (2)(e) of this administrative regulation, an otherwise eligible borrower or student for whom a parent is borrowing who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible to benefit from assistance under an authority insured student loan program under the following conditions:

(1)(a) An otherwise eligible borrower or student for whom a parent is borrowing who is in default on a loan made under the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible pursuant to Section 5(1)(e) or (2)(e) of this administrative regulation if the secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the otherwise eligible borrower has made satisfactory arrangements to repay the defaulted loan.

(b) For purposes of paragraph (a) of this subsection, the otherwise eligible borrower shall be deemed to have made satisfactory arrangements to repay a defaulted authority insured student loan if the borrower or student for whom a parent is borrowing:

1. Repays an amount necessary to bring the repayment obligation contractually current, and promises to make monthly payments on the remaining outstanding balance necessary to repay that balance within three (3) to five (5) years; or

2. Agrees to make monthly payments, and does make at least six (6) consecutive voluntary payments, none of which are more than ten (10) days delinquent, in an amount that is the greater of fifty (50) dollars, the originally scheduled payment prior to default, or twenty-five (25) of the borrower's disposable pay, provided that the required payments shall not exceed an amount that is determined by the executive director of the authority to be reasonable and affordable based on the individual's total financial circumstances.

(2) Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs. An otherwise eligible student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs shall be eligible pursuant to Section 1(7) of this administrative regulation if the institution that made the loan or the secretary, if the loan has been assigned to the secretary, certifies that the student has made satisfactory arrangements to repay that loan.

(3) The participating institution may rely on the borrower's or student's written statement that he [~~or she~~] is not in default, unless the institution has information to the contrary.

(4) Neither a loan that is discharged in bankruptcy nor a defaulted loan that is paid in full after default shall be considered to be in default for purposes of this section.

Section 8. Statement of Educational Purpose. (1) In order to meet the requirement of Section 5(1)(f) and (2)(f) of this administrative regulation, an otherwise eligible borrower shall submit to the lender, each academic year for which a loan is sought, a written statement of educational purpose, on a form approved by the secretary, which need not be notarized, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending. In this statement the borrower shall include his [~~or her~~] Social Security number or if he [~~or she~~] does not have a Social Security number, his [~~or her~~] student identification number.

(2) Notwithstanding subsection (1) of this section, a student is only required to file the statement of educational purpose once for his [~~or her~~] course of study if:

(a) The course of study is one (1) academic year or less in length; and

(b) The student is expected to complete the course of study within a twelve (12) month period.

Section 9. Additional Eligibility Requirements for Receipt of a Subsidized Federal Stafford Loan. In addition to the requirements provided in Sections 1 and 5(1) of this administrative regulation, a student seeking a subsidized federal Stafford Loan shall:

(1) Have provided to the lender a statement from the participating institution, at which the student has been accepted for enrollment, or at which the student is in attendance, that:

(a) Sets forth the student's estimated cost of attendance;

(b) Sets forth, for the period for which the loan is sought, the amount of estimated financial assistance the student will receive:

(c) Sets forth a schedule for disbursement of the proceeds of the loan in installments;

(d) Evidences a determination of need for a loan and the amount of such need, as determined under part F of Title IV of the federal Act (20 USC 1087kk,et seq.);

(2) Provide to the lender at the time of application for a loan the student's driver's license number, if any;

(3) A participating institution shall not, in carrying out the

provisions of subsection (2) of this section, provide a statement which certifies the eligibility of any student to receive any loan under this section in excess of the maximum amount applicable to such loan;

(4) Except as provided in subsection (3) of this section, a participating institution may refuse to certify a statement which permits a student to receive a loan or to certify a loan amount that is less than the student's determination of need, as determined under part F of Title IV of the federal Act (20 USC 1087kk, et seq.), if the reason for such action is documented and provided in written form to each student so affected.

Section 10. Additional Eligibility Requirements for Receipt of a Federal SLS Loan. In addition to the requirements set forth in Sections 1 and 5(1) of this administrative regulation a student seeking a federal SLS loan for any period of enrollment, shall:

(1) Have received a determination of need for a subsidized federal Stafford Loan, and, if determined to have need for such a loan, have applied for such a loan;

(2) Be:

(a) A graduate or professional student;

(b) An undergraduate independent student; or

(c) An undergraduate dependent student, if the financial aid administrator determines and documents the determination in the institution's records, after review of the financial information submitted by the student and considering the debt burden of the student, that exceptional circumstances will likely preclude the student's parents from borrowing a federal PLUS loan for purposes of the expected family contribution and that the student's family is otherwise unable to provide such expected family contribution; and

(3) Notwithstanding paragraph (3)(b) of Section 1 of this administrative regulation, has a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.

Section 11. Eligibility Requirements for Receipt of a Federal Consolidation Loan. (1) For the purpose of this section, an individual shall be eligible to borrow a federal Consolidation Loan, if, at the time of application for a consolidation loan, the individual:

(a) Has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and

(b) Is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower, who has made satisfactory repayment arrangements pursuant to Section 7 of this administrative regulation, and who will reenter repayment through loan consolidation.

(2) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except:

(a) With respect to eligible student loans received after the date of receipt of the consolidation loan; and

(b) That loans received prior to the date of the consolidation loan may be added to the consolidation loan during the 180-day period following the making of the consolidation loan.

(3) A married couple, each of whom has eligible student loans, may be treated as if the couple were an individual borrowing under subsections (1) and (2) of this section if the couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to any subsequent change that may occur in the couple's marital status. Only one (1) spouse in a married couple applying for a consolidation loan need meet any of the requirements of subsection (1) of this section, except that each spouse shall:

(a) Individually make the initial certification that no other application is pending for a federal Consolidation Loan, or that the individual has sought and has been unable to obtain a federal Consolidation Loan from the holders of that individual's eligible loans selected for consolidation; and

(b) Agree to promptly notify the holder of the federal Consolidation Loan concerning any change of address.

(4) Eligible student loans. For the purpose of this section, student loans are eligible for discharge through a federal Consolidation Loan if the loans are:

(a) Made, insured, or guaranteed under part B of Title IV of the federal Act, except for loans made to parent borrowers under the federal PLUS loan program as in effect prior to October 17, 1986;

(b) Made under part E of Title IV of the federal Act; or

(c) Made under subpart 11 of part C of title VII of the Public Health Service Act.

Section 12. Conditions of Ineligibility. (1) Notwithstanding any other provision of this **administrative** regulation, no incarcerated student or parent is eligible to receive an authority insured student loan under this title.

(2) Loss of eligibility for violation of loan limits.

(a) No student shall be eligible to receive any loan under this administrative regulation if the participating institution determines that the student fraudulently borrowed in violation of the annual loan limits applicable to any loan made or insured under Title IV part B, part D or part E of the federal Act in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits applicable to any loan made or insured under part B, part D or part E of the federal Act.

(b) If the participating institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, the institution shall allow the student to repay any amount borrowed in excess of the limits prior to certifying the student's eligibility for further authority insured student loans.

(3) An individual who previously had a federal Stafford loan, federal SLS loan, federal PLUS loan, or a federal Consolidation loan cancelled, due to disability, or discharged, by bankruptcy or compromise, shall not be eligible for an authority insured student loan until the borrower:

(a) Reaffirms the loan debt that was previously cancelled due to the borrower's total and permanent disability, or was discharged by bankruptcy or compromise; and

(b)1. In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

2. Signs a statement acknowledging that any new loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(4) A student shall not be eligible to borrow or benefit from an authority insured student loan for enrollment in a correspondence course of instruction, unless the course is part of a program leading to an associate, bachelor, or graduate degree.

(5) The financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, other than a course that is delivered using video cassette or disc recordings that is not delivered in person to other students of the participating institution.

(6) An individual shall not be eligible to borrow or benefit from an authority insured student loan to the extent the individual is determined by a court, pursuant to PL 100-690, to be ineligible to receive any federal benefits following conviction for any federal or state offense related to distribution or possession of controlled substances.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: December 11, 1992
FILED WITH LRC: December 15, 1992 at noon

**COUNCIL ON HIGHER EDUCATION**
**(As Amended)**

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

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

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

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

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

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

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

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

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

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

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

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

(a) When the level of achievement for a particular objective exceeds that of the 1987 baseline, the following equation shall be applied:

**1.** 100, multiplied by the difference between the percentage attained in the year being measured and the percentage attained in 1987, divided by the difference between the percentage expected by 1994-95 and the percentage attained in 1987.

**2. Example of the use of the equation identified in subparagraph 1 of this paragraph:**

| 1987 | 1991-92 | 1994-95 |
|---|---|---|
| 5.0% | 6.0% | 8.0% |

annual progress = 100 ((6.0 - 5.0)/(8.0 - 5.0))
= 100 (1.0/3.0)
= 100 (0.333)
= 33.3%

(b) When the level of achievement for a particular objective falls below that of the 1987 baseline, the following equation shall be applied:

**1.** 100, multiplied by the difference between the percentage attained in the year being measured divided by the percentage attained in 1987 and one (1).

**2. Example of the use of the equation identified in subparagraph 1 of this paragraph:**

| 1987 | 1991-92 | 1994-95 |
|---|---|---|
| 5.0% | 4.0% | 8.0% |

annual progress = 100 ((4.0/5.0) - 1)
= 100 (0.8 - 1)
= 100 (-0.2)
= -20%

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

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

(a) An institution exhibits progress in six (6) of the eight (8) objectives **established in Section 1 of this administrative regulation** except for:

**1.** Kentucky State University which shall exhibit progress in five (5) of the seven (7) objectives; and

**2.** **[**~~except for~~**]** Community colleges which shall exhibit progress in three (3) of the four (4) objectives; and

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

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

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

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

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

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

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

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

1. Progress in five (5) of the eight (8) objectives **established in Section 1 of this administrative regulation** except for**:**

**a.** Kentucky State University which shall exhibit progress in four (4) of the seven (7) objectives; and

**b. [**~~except for~~**]** Community colleges which shall exhibit progress in two (2) of the four (4) objectives; and

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

(b) Qualitative basis.

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

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

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

4. Student-related data or plans may include:

a. Commitment of funds to equal opportunity related activities;

b. Financial aid distribution;

c. Student services activities;

d. High school visitations and results; and

e. Academic support services.

5. Employee-related data or plans may include:

a. Number of interviews;

b. Offers made that are accepted or rejected;

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

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

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

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

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

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

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

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

JOE B. CAMPBELL, Chairperson

APPROVED BY AGENCY: December 3, 1992

FILED WITH LRC: December 7, 1992 at 3 p.m.

**GENERAL GOVERNMENT CABINET**
**State Board of Accountancy**
**(As Amended)**

**201 KAR 1:063. Certificate of experience.**

RELATES TO: KRS 325.261**(1)(d), (2)(a), (b)**

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) "Audit" means an examination of financial statements of an entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(2) "Compilation with disclosures" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements and includes all required disclosures.

(3) "Review" means performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

(4) **[**~~One (1) year of full time employment equals 2,080 hours to include the firm or agency's standard illness, vacation and holiday policies.~~

~~(5)~~**]** "Supervision" means a licensed certified public accountant of this or any state coordinating, guiding, inspecting, controlling and evaluating the activity of an employee.

**(5) [**~~(6)~~**]** "Third-party reliance" means the trust, dependence or confidence placed by a third-party reader of statements based upon the report issued by an independent certified public accountant.

Section 2. (1) Each certificate applicant shall **have submitted by his employer [**~~submit~~**]** a "Certificate of Experience" (1992). This form is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky, 40202 between 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.261 and **this administrative regulation [**~~201 KAR 1:050~~**]**, a certificate shall be submitted by each employer.

(3) All work experience, gained after the awarding of a baccalaureate degree, shall be given credit on an hour-worked-for-an-hour-earned basis.

(4) All work experience gained prior to the awarding of a baccalaureate degree or the completion of baccalaureate course work shall be considered part time.

(a) The employer shall submit a certificate of experience accompanied by a list of hours worked per week.

(b) The hours worked per week shall be calculated by totaling and dividing by eighty (80) to determine the full-time equivalency.

Section 3. Public Accounting **and State Government** Experience. The **[**~~applicant shall have submitted on his behalf, a~~**]** certificate of experience **[**~~as described in Section 1 of this administrative regulation. This certificate~~**]** shall include the following **information [**~~material~~**]** verified by the supervising certified public accountant:

**(1) The appropriate years of experience as required by KRS 325.261(1)(d) or (2)(b). One (1) year of experience means the**

**completion of 2,080 hours of employment;**

**(2)** [~~(1)~~] All experience was performed under the supervision of a CPA as described in Section 1 of this administrative regulation;

**(3)** [~~(2)~~] The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;

**(4) The experience of subsection (1) of this section shall include a minimum of 500 hours in preparing audits, reviews and compilations with disclosure;**

**(5) The experience obtained in the preparation of** [~~(3) A minimum of 500 hours in preparing audits, reviews and compilations with disclosures;~~

~~(4) If the experience included participation in~~] audits, reviews, and compilations with disclosures **shall have included** [~~, the applicant's total experience shall include~~] ten (10) of the following analytical techniques and procedures [~~which shall be affirmed~~]:

(a) Review, testing and evaluation of internal control policies and procedures related to sales and revenue, costs and expenses, and payroll;

(b) Verification of accounts receivable;

(c) Review of inventory procedures and verification of physical inventories;

(d) Review of reconciliation of client bank accounts;

(e) Testing inventory valuation and pricing;

(f) Testing cost and depreciation of fixed assets;

(g) Testing prepaid and intangible assets and deferred charges;

(h) Review and verification of accounts payable;

(i) Review of the adequacy of accrual and allowance provisions;

(j) Review of preparation of income tax provision;

(k) Search for unrecorded liabilities;

(l) Analysis and verification of changes in equity accounts or fund balances;

(m) Application of appropriate analytical review procedures to revenue and expenses;

(n) Testing of revenue and purchase cutoff;

(o) Review for significant subsequent events;

(p) Review of pertinent legal documents;

(q) Evaluations of disclosures relating to commitments and contingencies; and

(r) Review to determine compliance with government standards;

**(6)** [~~(5)~~] The applicant's working titles during employment; and

**(7) The signataure of** [~~(6)~~] the supervising CPA **which attests** [~~shall sign the certificate of experience attesting~~] to the truth and accuracy of the statements made regarding the applicant's experience.

[~~Section 4. State Government Experience. The applicant shall have submitted on his behalf, a certificate of experience as described in Section 1 of this administrative regulation. This certificate shall include the following material verified by the supervising certified public accountant:~~

~~(1) All experience was performed under the supervision of a CPA or a Kentucky public accountant as described in Section 1 of this administrative regulation;~~

~~(2) The month, day and year the state government employment began, and the month, day and year the employment was terminated or the experience was completed; (3) A minimum of 500 hours of performing audits;~~

~~(4) If the experience included participation in audits, the applicant's total experience in ten (10) of the following analytical techniques shall be affirmed:~~

~~(a) Review, testing and evaluation of internal control policies and procedures related to sales and revenue, costs and expenses, and payroll;~~

~~(b) Verification of accounts receivable;~~

~~(c) Review of inventory procedures and verification of physical inventories;~~

~~(d) Review of reconciliation of client bank accounts;~~

~~(e) Testing inventory valuation and pricing;~~

~~(f) Testing cost and depreciation of fixed assets;~~

~~(g) Testing prepaid and intangible assets and deferred charges;~~

~~(h) Review and verification of accounts payable;~~

~~(i) Review of the adequacy of accrual and allowance provisions;~~

~~(j) Review of preparation of income tax provision;~~

~~(k) Search for unrecorded liabilities;~~

~~(l) Analysis and verification of changes in equity accounts or fund balances;~~

~~(m) Application of appropriate analytical review procedures to revenue and expenses;~~

~~(n) Testing of revenue and purchase cutoff;~~

~~(o) Review for significant subsequent events;~~

~~(p) Review of pertinent legal documents;~~

~~(q) Evaluations of disclosures relating to commitments and contingencies; and~~

~~(r) Review to determine compliance with government standards;~~

~~(5) The applicant's working titles during employment; and~~

~~(6) The supervising CPA shall sign the certificate of experience attesting to the truth and accuracy of the statements made regarding the applicant's experience.~~]

Section **4.** [~~5. Internal Revenue Service.~~] The applicant shall have submitted on his behalf a certificate of experience as described in Section **2** [~~1~~] of this administrative regulation. This certificate shall include the following **information** [~~material~~] verified by the Chief of the Examinations Division:

(1) The month, day and year the employment as a field audit agent began and the month, day and year the employment was terminated or the experience was completed;

(2) The month, day and year the applicant was employed at GS-11;

(3) A list of the lines of commercial or industrial businesses which the applicant audited in accordance with KRS 325.261(2)(a); and

(4) An applicant, who hold's a master's degree in accounting or business administration or a master's degree of their equivalent approved by the board, shall have the experience requirement reduced by one (1) year.

Section **5.** [~~6.~~] Documentation and Verification of Applicant Experience. (1) Any certified public accountant who signs a certificate of experience shall maintain supporting documentation of the applicant's experience until the applicant is granted a certificate.

(2) [~~The board shall consider~~] Any false or misleading statement made by a CPA or public accountant **shall constitute** [~~on a certificate of experience as~~] a violation of KRS 325.340(1)(h).

(3) Inspection of supporting documentation may be made by the board or it's designee upon receipt of the application, prior to it's approval.

Section 6. 201 KAR 1:062 is hereby repealed.

ASA L. HORD, President
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

**GENERAL GOVERNMENT CABINET**
**State Board of Accountancy**
**(As Amended)**

**201 KAR 1:130. Examination application procedure.**

RELATES TO: KRS 325.261, 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY AND FUNCTION: This administrative regulation

establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. Definitions. (1) ~~["A college or university" recognized by the board means an institution within the United States whose course credits would be accorded full recognition when transferred to a Kentucky state-funded four (4) year institution of higher education.~~

~~(2)~~] "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded and contains an authorizing signature or seal.

(2) [~~(3)~~] "Quarter hour" shall be equal to 66/100ths of a semester hour.

(3) [~~(4)~~] "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(4) [~~(5)~~] "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, **computers** [~~business computing~~], statistics, or accounting.

(5) [~~(6)~~] "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. [~~1.~~] First Time Examination Applicants. The applicant shall submit:

(1) A completed "Application for Admission to the CPA Examination" (1992) that has been signed and acknowledged before a notary public. The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday;

(2) Two (2) photographs taken within ninety (90) days preceding the filing of the application, which bear the applicant's signature on the back;

(3)[~~(a)~~] An official transcript which evidences completion of the educational requirements specified in KRS 325.261 **which includes a major or concentration in accounting** [~~and~~] as defined in this administrative regulation. **The educational requirements shall have been completed at a:**

**(a) College or university:**

**1. Within the United States; and**

**2. Whose course credits are accorded full recognition by a Kentucky state-funded four (4) year institution of higher education; or**

**(b) A postsecondary educational institution:**

**1. Outside the United States; and**

**2. Whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.;**

**(c) The certification required by paragraph (b) of this subsection shall state that the:**

**1. Foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university; and**

**2. Applicant had a major or concentration in accounting;**

**(d) A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 West Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.** [~~A foreign applicant who graduated from a post-secondary educational institution outside of the United States shall, in place of the official transcript, submit an evaluation performed by Foreign Academics Credentialing Service (FACS) or by another credentialing agency which is a member of the National Association of Credential Evaluation Services, Inc. The evaluation shall certify that the foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university and that the candidate has a major or concentration in accounting. A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202 between 8:30 a.m. and 4:30 p.m., Monday through Friday.~~] [~~201 KAR 1:062~~;

~~(b) The official transcript shall be a document issued by an institution of higher education and stamped with the institution's certifying seal or stamp; and~~]

(4) A fee of $125 dollars, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 3. [~~2.~~] An application for the May examination shall be filed with the board or postmarked no later than March 1st. Applications for the November examination shall be filed with the board or postmarked no later than September 1st.

Section 4. [~~3.~~] Provisional Examination Applicants. A person who expects to satisfy the educational requirements of KRS 325.261 and this administrative regulation [~~201 KAR 1:062~~] within ninety (90) days following an administration of the examination shall be eligible to submit an application for the examination if he:

(1) Satisfies the requirements of Sections 2 and 3 [~~1(1), (2), (4) and 2~~] of this administrative regulation;

(2) Submits a transcript of college courses completed:

(3)(a) Submits an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and this administrative regulation [~~201 KAR 1:062~~] within ninety days following the examination;

(b) The statement shall include a list of all course titles and credit hours in which the applicant is currently enrolled; and

(c) Submits a final official transcript showing completion of all educational requirements within ninety (90) days following the administration of the examination.

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a first-time candidate.

Section 5. [~~4.~~] Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 6. [~~5.~~] Letter of Intent to Attend the Examination. (1) The board shall mail a letter of intent with information about the dates, times and location of the next scheduled examination to candidates. The letter of intent shall be mailed to the most recent address provided by the candidate.

(2)(a) The candidate shall return the letter of intent to the board stating whether or not he **intends to** [~~will~~] sit for the next scheduled examination.

(b) The letter of intent shall be postmarked or filed with the board no later than:

1. April 1, for the May examination; and
2. October 1, for the November examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the candidate shall return the letter of intent with the examination fee.

(b) A candidate who is taking the examination for the first time shall submit the examination fee with his application.

(c) Except as provided in paragraph (d) of this subsection, the examination fee shall be twenty-five (25) dollars per subject.

(d) The fee for accounting practice shall be fifty (50) dollars.

(e) The examination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4)(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:

1. Remain a conditional examination candidate;
2. Not be permitted to sit for the examination; and
3. Forfeit deferred examination fees.

(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.

(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:

1. Not be permitted to sit for the examination;
2. Forfeit fees paid; and
3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 [1] of this administrative regulation.

Section 7. [6.] (1) Except as provided by subsections (2) and (3) of this section, an examination fee shall be deferred to the next scheduled examination if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and
2. Written request to defer the fee; and

(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:

1. Received by the board; or
2. Postmarked.

(2) A candidate shall be granted one (1) deferral.

(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.

Section 8. [7.] (1) A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or
2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the State Board of Accountancy of the state in which he intends to be licensed;

(b) One (1) photograph taken within ninety (90) days prior to the filing of his written request to the board;

(c) A check or money order:

1. In the amount of $100;
2. Payable to the Kentucky State Board of Accountancy; and

(d) The letter of intent required by Section 6 [5] of this administrative regulation.

ASA L. HORD, President

APPROVED BY AGENCY: December 14, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department of Environmental Protection**
**Division of Waste Management**
**(As Amended)**

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

RELATES TO: KRS 224.43, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834

NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-834 requires the cabinet to establish the loan fund to make low interest loans available to private interests. Pursuant to KRS 224.43-010 it is the policy of the cabinet to encourage a regional approach to solid waste management. This **administrative** regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Any person regularly engaged in a recycling or recovered material processing business, or if entering the field has made prior arrangements in the form of written commitments for supplies, equipment and personnel, or a facility permitted by the cabinet for incineration of waste tires for the recovery of energy may apply for financial assistance from the waste tire trust fund for any project that meets the criteria listed in KRS 224.50-834.

(2) The applicant shall possess the legal authority to construct or acquire, operate, and maintain the project for which loan assistance is sought from the waste tire trust fund.

(3) The applicant shall possess the legal authority to incur a pledge to repay any loan assistance.

(4) The project shall comply with goals and objectives of KRS 224.50-824 and 224.50-834.

(5) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(6) The applicant shall assure continued operation and maintenance of the project.

(7) The proposed source of revenue shall be sufficient to operate and repay any debt financing associated with the project.

(8) The applicant shall have approval by resolution from the local governing body as to its consistency with the approved area solid waste management plan.

(9) The applicant nor any of its key personnel nor any third party operator shall:

(a) Intentionally misrepresent or conceal any material fact in the application;

(b) Obtain or attempt to obtain the loan by misrepresentation or concealment;

(c) Have been convicted by final judgment of any felony within five (5) years preceding the filing of the application; and

(d) Been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0042, entitled "Waste Tire Trust Fund Application for Loan Assistance" (October 1992) and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2)**(a)** The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on **May 1, 1993** [~~the effective date of this administrative regulation~~]. The cabinet shall accept applications **from May 1, 1993 through** [~~until~~] COB June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. **Subsequent application cycles shall be annual, beginning on August 1 and ending COB August 31, in each year that the balance in the waste tire trust fund on June 30 exceeds $335,000.** [~~The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program.~~]

**(b) The initial and** [~~These~~] subsequent cycles shall be advertised

in public notices, which shall be published **pursuant to KRS 424.130** in major newspapers with statewide circulation and distributed to all county judge executives and mayors of first and second class cities, [political subdivisions] as well as other parties who have notified the division of an interest in submitting an application. **The public notice for the initial cycle shall be published no earlier than April 10, 1993 and no later than April 24, 1993. For years in which subsequent cyles will be held, the public notice shall be published no earlier than July 11 and no later than July 25.**

(3) The application shall be properly completed and accurate.

Section 3. Criteria for Prioritizing Project Applications. [(1)] The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system that measures the degree to which the proposed project:

(1) [(a)] Promotes reuse and recycling efforts of waste tires or waste tire material; [, and]

(2) Eliminates existing and prevents future waste tire piles;

(3) [(b)] Satisfies the identified needs of the project service area;

(4) [(c)] Efficiently serves the area geographically and by population;

(5) [(d)] Is needed within the proposed service area;

(6) [(e)] Is a regional project; and

(7) [(f)] Is financially sound. The financial review shall be conducted to consider, but not be limited to, the following:

(a) [1.] Appropriateness of the type of revenues pledged for repayment of a loan and operation and maintenance cost of the project;

(b) [2.] Validity of the assumptions used to project any revenues pledged to the project;

(c) [3.] Assurance that revenues pledged to the project will be collected;

(d) [4.] Security of all other sources proposed to fund the project costs;

(e) [5.] Credit history of the applicant;

(f) [6.] Reasonableness of the projections for operation and maintenance cost of the project; and

(g) [7.] Any legal restrictions on the applicant to pledge the proposed revenues for repayment of a loan from the waste tire trust fund or operation and maintenance of the project.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a loan agreement with the cabinet that sets forth the terms and conditions for completion of the project, and actions thereafter. This shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the loan agreement is executed.

(2) All recipients of loans from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0042A, entitled "Waste Tire Trust Fund Loan Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m. Monday through Friday.

(3) The applicant shall be responsible for the repayment of any loan, and for the continued operation and maintenance of any facility or other project funded by the cabinet. If the project is to be operated, maintained or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment. Five (5) percent of the funds committed shall be reserved for this purpose until the funded projects are completed.

(5) Funds shall be released to the applicant on a monthly basis, for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project, funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) The applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility or until the final repayment of the loan, whichever is shorter.

(8) Any proposed change in the project or in the information provided in the original application, shall require prior approval of the cabinet. The cabinet may require approval by the local governing body.

(9) The interest rate shall be established in the loan agreement and shall be based on the index rate at the time of the loan less two (2) percent. The index rate is the average of the Bond Buyer's Index of twenty (20) G. O. Bonds as published weekly in the Bond Buyer (a financial newspaper circulated in New York) calculated based on the weeks following within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(10) Interest shall be payable to the cabinet semiannually beginning with the next successive interest payment date established in the loan agreement after the applicant receives funds.

(11) Principal shall be payable to the cabinet semiannually beginning with the next successive principal payment date established in the executed loan agreement. The total term of principal repayment shall not exceed thirty (30) years, or the useful life of the facilities and equipment financed, whichever comes first.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division of Waste Management**
**(As Amended)**

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

RELATES TO: KRS 224.43, 224.50
STATUTORY AUTHORITY: KRS 224.10-100, 224.50-820, 224.50-834
NECESSITY AND FUNCTION: KRS 224.50-820 establishes the waste tire trust fund to be used for programs to eliminate existing and prevent future accumulations of waste tire piles. KRS 224.50-828 allows the cabinet to enter into agreements for the removal of existing waste tire piles, or for the removal of waste tires collected by the local government through a local community sponsored program. KRS 224.43-340 requires each county to be responsible for implementing the solid waste management plan which is required to include an inventory and description of all existing solid waste management facilities and activities, and identification and assessment of current and future solid waste management problems faced by the area. For this reason, grants should be awarded to the cities, counties, or urban-county governments to be used to implement a waste tire removal and control program pursuant to KRS 224.50-824 and 224.50-828. Pursuant to KRS 224.43-010, it is the policy of the cabinet to encourage a regional approach to solid waste management. This **administrative** regulation establishes eligibility requirements, application requirements, and prioritization criteria to be used by the cabinet to administer this program.

Section 1. General Eligibility Requirements. (1) Eligible applicants for financial assistance from the waste tire trust fund grant program shall be any city, county or urban-county government.

(2) The proposed project cost estimates shall be reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(3) The applicant shall have an approved area solid waste management plan or be a part of an approved area solid waste management plan.

(4) The application shall be properly completed and accurate.

(5) If the project is to be performed by someone other than the applicant, that person shall not have been convicted by final judgement of any felony within five (5) years preceding the filing of the application; or been adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations of the United States, the Commonwealth, or any other state, and the cabinet determines that the conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner. **The applicant shall be responsible for assuring compliance with KRS Chapter 335B, regarding the public employment qualifications of the person performing the project.**

(6)(a) No more than seventy-five (75) percent of the cost of a project may be funded by a grant from the waste tire trust fund.

(b) Each applicant shall provide other funding equal to at least twenty-five (25) percent of the cost of a project which may consist of a local contribution, funds derived from grants or loans from other sources, or in-kind services, if the value of such services or property can be documented to the cabinet's satisfaction.

Section 2. Application Submission Requirements and Review Process. (1) The application form, DEP 0043, entitled "Waste Tire Trust Fund Application for Grant Assistance" (October 1992) and its requirements are hereby incorporated by reference. Application forms may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. through 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application form to the Division of Waste Management.

(2)**(a)** The cabinet shall review and prioritize applications in cycles. The first application cycle shall begin on **May 1, 1993** **[**~~the effective date of this regulation~~**]**. The cabinet shall accept applications **from May 1, 1993 through** **[**~~until~~**]** COB on June 30, 1993, at which time all applications received during this period shall be reviewed and prioritized. **Subsequent application cycles shall be annual, beginning on August 1 and ending COB August 31, in each year that the balance in the waste tire trust fund on June 30 exceeds $335,000.** **[**~~The cabinet shall establish subsequent cycles based on available funding and expressed interest in the program.~~**]**

**(b) The initial and** **[**~~These~~**]** subsequent cycles shall be advertised in public notice, which shall be published **pursuant to KRS 424.130** in major newspapers with statewide circulation and distributed to all county judge executives and mayors of first and second class cities, **[**~~political subdivisions~~**]** as well as any other parties that have notified the division of an interest in submitting an application. **The public notice for the initial cycle shall be published no earlier than April 10, 1993 and no later than April 24, 1993. For years in which subsequent cycles will be held, the public notice shall be published no earlier than July 11 and no later than July 25.**

Section 3. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all acceptable applications received for each application cycle using a scoring system which measures the degree to which the proposed project:

(a) Addresses a significant environmental hazard;

(b) Assists owners of less than 500 waste tires with the cost of removal;

(c) Promotes reuse and recycling efforts of waste tires or waste tire materials;

(d) Complies with the goals and objectives of KRS 224.50-824 through 224.50-832;

(e) Efficiently serves the area geographically and by population;

(f) Is consistent with the objectives of the approved area solid waste management plan;

(g) Is needed within the proposed service area;

(h) Complies with the implementation schedule set forth in the area solid waste management plan;

(i) Is a regional project; and

(j) Is financially viable. The financial review shall consider, but not be limited to the following:

1. Validity of the assumptions used to project any revenues pledged to the project;

2. Assurance that revenues pledged to the project will be collected;

3. Security of all other sources proposed to fund the project costs; and

4. Reasonableness of the projections for operation and maintenance cost of the project.

(2) Projects that are proposed with the greatest percentage of matching funds shall receive a higher priority after the review of criteria in subsection (1) of this section.

Section 4. Conditions for Assistance from the Waste Tire Trust Fund. (1) The applicant shall execute a grant agreement with the cabinet that sets forth the terms and conditions for completion of the project and actions thereafter. The grant agreement shall include a pledge by the grant recipient to use revenues generated by the project to further the project or to support other activities consistent with the approved area solid waste management plan. No monies shall be released to the applicant until the grant agreement is executed.

(2) All recipients of grants from the waste tire trust fund shall submit quarterly reports to the cabinet using the form DEP 0043A entitled, "Waste Tire Trust Fund Grant Report" (October 1992). The form and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

(3) The applicant shall be responsible for the continued operation and maintenance of any facility or other project funded by the cabinet if applicable. If the project is to be operated, maintained, or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

(4) Upon determination of the actual bid cost of a project, the funding awarded by the cabinet may be increased by up to five (5) percent of the original funding commitment.

(5) Funds shall be released to the applicant on a monthly basis for actual project costs incurred. An itemized list of expenditures with copies of invoices or other supporting documentation shall be submitted to the cabinet for payment.

(6) The applicant, upon completion of the project funded by the waste tire trust fund, shall comply with KRS Chapters 109 and 224 and all administrative regulations pertaining to solid waste management.

(7) If applicable, the applicant shall retain ownership of the facilities and equipment financed by the waste tire trust fund during the useful life of the facility.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1992

FILED WITH LRC: December 15, 1992 at 11 a.m.

**EDUCATION AND HUMANITIES CABINET**
**Department of Education**
**Office of Learning Results Services**
**(As Amended)**

**704 KAR 10:050. Authority to approve courses not in program of studies [~~; procedure for offering~~].**

RELATES TO: KRS [~~156.031,~~] 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 156.160 mandates that the State Board for Elementary and Secondary Education adopt administrative regulations with respect to the courses of study for the different grades in the common schools. This regulation establishes procedures for seeking [~~State Board of Education~~] approval for courses that are not listed in the "Program of Studies for Kentucky Schools, K-12."

Section 1. Any school desiring to offer a course not listed in the "Program of Studies for Kentucky Schools, K-12", as adopted in 704 KAR 3:304, shall secure the approval [~~of the State Board of Education upon recommendation~~] of the commissioner of education or his designee [~~chief state school officer~~] before such a course is offered. Failure to secure [~~state board~~] approval before the course is initiated shall result in the course not being recognized for graduation credit. No course shall be considered for approval that is inconsistent with Kentucky Administrative Regulations, Kentucky Revised Statutes, or the Constitution of the Commonwealth of Kentucky. Any school implementing a course not listed in the "Program of Studies for Kentucky Schools, K-12" [~~an experimental program or enrichment course hereunder~~] shall notify the State Department of Education when the [~~program or~~] course is terminated.

Section 2. (1) The procedure for seeking approval of a course not listed in the "Program of Studies for Kentucky Schools, K-12" [~~an experimental program or enrichment course~~] shall be as follows: the school council, or where none exists, superintendent of a county or independent school district or the administrative head of a nonpublic school voluntarily complying with state board curriculum standards and seeking permission to offer an unlisted course shall notify the Deputy Commissioner of Learning **Results** [~~Support~~] Services [~~head of the Bureau of Instruction~~] in writing no later than **May 1** [~~August 1~~] [~~May 31~~] when requesting approval for a course [~~program~~] beginning the first semester and **October 1** [~~November 1~~] [~~September 30~~] when requesting approval for a course [~~program~~] beginning the second semester. The application shall contain the following information:

(a) The name or title of the [~~program or~~] course;
(b) A statement indicating need for the course;
(c) A statement of the objectives of the course;
(d) A brief description of how the course meets the goals and outcomes as established in KRS 158.6451 [~~the scope and content of the course~~];
(e) A statement describing adequacy of staff, facilities, equipment, and materials for implementing the course;
(f) A description of deviation from the "Program of Studies for Kentucky Schools, K-12;"
(g) The amount of credit to be allowed for the course or the extent of grade levels involved in the proposed offering;
(h) Proposed method of evaluation; and
(i) Anticipated length of experiment.

(2) Any request for approval of a course not listed in the "Program of Studies for Kentucky Schools, K-12" shall be reviewed by staff members of the Bureau of Learning **Results** [~~Support~~] Services, who shall prepare a recommendation and forward the request to the Commissioner of Education or his designee for action.

(3) [~~(2)~~] A written evaluation of the [~~any~~] approved [~~experimental program or enrichment~~] course shall be submitted to the Deputy Commissioner of Learning **Results** [~~Support~~] Services [~~head of the Bureau of Instruction~~] at the close of the school year.

[~~Section 3. The chief state school officer shall submit the request to the State Board of Education, accompanied by his recommendation. Following action of the State Board of Education, local school districts or nonpublic schools having submitted a request to offer an experimental program or enrichment course shall be notified in writing within ten (10) days of the board decision.~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 13, 1992
FILED WITH LRC: November 13, 1992 at 11 a.m.

**WORKFORCE DEVELOPMENT CABINET**
**Department for Adult and Technical Education**
**(As Amended)**

**780 KAR 3:070. Attendance.**

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the regional executive director of the respective school operation.

(3) The appointing authority may require employees to work hours and work days other than normal including but not limited to inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools, regions, or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may

be accumulated shall be 200 [~~100~~] hours. [~~The appointing authority may approve an employee to work over the 100 hour limit in cases of emergency but shall not exceed fifty (50) hours over the maximum.~~]

(2) Compensatory time shall be granted for those working in full-time positions only and who perform duties and responsibilities pertaining only to this full-time position.

(3) Upon separation from state service, employees shall be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

[~~(c) Work days within the employment year when school is not in session.~~

~~(d) Other times when requested in advance and when practicable and approved by the immediate supervisor.~~]

(5) All [~~other~~] certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) [~~Each~~] Full-time employees in the certified and equivalent personnel system except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

| Months of Service | Annual Leave Days |
|---|---|
| 0-59 months | 1 leave day per month; 12 per year |
| 60-119 months | 1 1/4 leave days per month; 15 per year |
| 120-179 months | 1 1/2 leave days per month; 18 per year |
| 180 months and over | 1 3/4 leave days per month; 21 per year |

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave [~~Each employee~~] shall be credited on [~~with additional leave upon~~] the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. Only those months for which the employee earned annual leave shall be counted in computing months of total service. [~~Employees serving on a part-time basis shall not be entitled to annual leave.~~]

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

| Months of Service | Maximum Amount |
|---|---|
| 0-59 months | Thirty (30) work days |
| 60-119 months | Thirty-seven (37) work days |
| 120-179 months | Forty-five (45) work days |
| 180-239 months | Fifty-two (52) work days; |
| 240 months and over | Sixty (60) work days |

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(b) School-based employees shall take time off during the following times:

1. [~~(a)~~] Spring break.

2. [~~(b)~~] Christmas break except on the four (4) official holidays normally given to state employees.

[~~(c) Work days within the employment year when school is not in session.~~

~~(d) Other times when requested in advance and when practicable and approved by the immediate supervisor.~~]

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual leave.

(7) Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days.

(8) Employees shall be allowed up to two (2) professional leave days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify

for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) Lump sum payment for accumulated annual leave.

(a) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in subsection (5) of this section when separated by proper resignation or retirement.

(b) In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave.

(d) The effective date of the separation shall be the last work day.

(14) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (4) of this section.

(15) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(16) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) [~~Each~~] Employees in the certified and equivalent personnel system, except emergency, per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave [~~up~~]on the first day of the month following the month in which the sick leave is earned.

**(2) Sick leave credits: full-time and former employees.**

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay, with the exception of educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or [~~of~~] any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements [~~during the year~~] attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no position available, the statutes pertaining to layoff apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of his sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) The Department for Adult and Technical Education shall continue to pay the state's contribution toward health and life insurance benefits between June 15 and August 1 for employees whose normal work year consists of ten and one-half (10 1/2) months.

(e) Any employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance

and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

(15) An employee may donate or receive sick leave donation under the following conditions:

(a) An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

1. Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

a. The name of the donor.
b. The agency or office in which the donor is employed.
c. The position number of the donor.
d. The social security number of the donor.
e. The name of the employee to which leave is being donated.
f. The agency or office in which the donee is employed.
g. The donee position number.
h. The donee Social Security Number.
i. The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.
j. Certification by the donor that this donation is given without expectation or promise for any purpose other than that authorized by this regulation.

2. The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

3. A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(b) An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

1. Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

a. Employee name.
b. Position number.
c. Social Security number.
d. Employee title.
e. The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.
f. Signature of the requestor or his personal representative.

2. The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(c) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(d) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(e) No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(f) No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.

Section 5. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a part plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and this absence shall not be charged to leave.

(a) [~~(1)~~] Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) [~~(2)~~] The appointing authority may require a copy of the orders

requiring the attendance of an employee before granting military leave.

(2) [~~(3)~~] The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted this leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioner of Adult and Technical Education may grant a sabbatical leave of absence without pay when requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or any other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. [~~All~~] Employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. Employees shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B, shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence. Absence without leave may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: November 18, 1992
FILED WITH LRC: December 11, 1992 at 11 a.m.

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

**803 KAR 25:011. Procedure for adjustments of claims.**

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.260
NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board.

Section 1. Definitions. (1) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(2) "Commissioner" means the individual employed by the board pursuant to KRS 342.230(2).

(3) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(4) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(5) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(6) "Date of filing" means the date a pleading, motion, or other document is received by the board at its office in Frankfort, Kentucky.

Section 2. Parties. (1) The parties to any application for adjustment of claim filed with the board pursuant to KRS 342.270 shall be

designated as "plaintiff" and "defendant." The party filing the original application in such proceedings shall be designated as the "plaintiff" and the adverse party (parties) as "defendant" ("defendants").

(2) All parties shall join as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any such person should refuse to join as a plaintiff, he shall then be joined as a defendant, and the fact of his refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. The administrative law judge to whom the matter is assigned may order upon a proper showing that any additional party be joined when the administrative law judge deems the presence of the party necessary or that any party be dismissed when the administrative law judge deems the presence of the party unnecessary.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120.

(c) Additional parties may be joined upon motion made as soon as practicable after legal grounds for joinder are known. The administrative law judge may, in his discretion, overrule any motion for joinder which is untimely made. Upon joinder of an additional party, a copy of the file shall be served on the party joined as ordered by the administrative law judge. Upon order of the administrative law judge, the commissioner shall provide notice of the joinder to the party joined.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, or other pleading shall be typewritten, and the printed forms prescribed by the board shall be used whenever applicable. All forms shall be furnished by the commissioner to any person who requests them, without charge.

(2) The original application for adjustment of claim shall be fully completed and filed in triplicate with the commissioner. The original and sufficient copies for serving all named parties and the administrative law judge shall be furnished. The commissioner shall serve the application upon all named parties other than the plaintiff by first class mail. The commissioner shall return unfiled to the plaintiff or his attorney any application which is not fully completed or which does not have attached all forms required to be filed with the application. If the application is resubmitted in proper form within twenty (20) days of the date it was returned by the commissioner, the filing date shall relate back to the date the application was first received by the commissioner. Otherwise, the second date of receipt shall be the filing date.

(3) All pleadings filed with the commissioner subsequent to the original application shall include the certificate of the party or attorney who filed the pleading stating the date and manner of service of a copy of the pleading upon the other parties. Service of these pleadings shall be made in one of the ways provided by Rule 5.02, Kentucky Rules of Civil Procedure. Copies of all pleadings filed after the application has been assigned to an administrative law judge and the parties have received notice of the assignment shall also be served upon the administrative law judge at his office address, and the certificate of service shall so show. Service of all pleadings and transcripts of proof by deposition upon the administrative law judge and the commissioner is required.

Section 4. Motions. (1) Every application for an order of the administrative law judge shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation. The party filing a motion shall tender with the motion a proposed order granting the relief requested by the motion.

(2) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(3) Every motion, the grounds of which depend upon the existence of facts not appearing in evidence at the time of the filing of the motion, shall be supported by affidavits evidencing such facts, which shall be served and filed with the motion. Contrary affidavits may likewise be served and filed by the opposing party.

(4) Every motion, the grounds of which depend upon the existence of one (1) or more facts which the movant contends are shown in evidence or are admitted by the pleading of the adverse party, shall contain a reference to the hearing transcript, deposition transcript, or medical report containing the evidence and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion may be considered by an administrative law judge ten (10) days after the date of filing of the motion. A response to a motion will be considered if filed prior to the tenth day after the date of filing of the motion.

(6) Every motion for the allowance of an attorney's fee shall be served upon the adverse party and also upon the attorney's client and the fact of such service certified as provided in Section 3(3) of this regulation. Every motion for the allowance of an attorney's fee shall set forth the amount of money requested and the percentage of the award represented by the fee. Every motion shall be accompanied by an affidavit of the attorney setting forth in detail the services rendered and the amount of time expended. Every motion shall also be accompanied by a completed Form 109 signed by the attorney and his client, and notarized, as required by KRS 342.320(3). Every motion for allowance of an attorney's fee shall be submitted within thirty (30) days following finality of the last appealable order of the administrative law judge.

Section 5. Application for Adjustment of an Injury Claim. (1) The original application for adjustment of injury claim (Form 101) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) One (1) medical report describing the injury which is the basis of the claim; and

(d) A signed waiver and consent to release relevant medical information in compliance with KRS 342.020(4) (Form 106).

The medical report required to be filed under paragraph (c) of this subsection may consist of the notes of a treating physician and other materials provided by the physician so long as the notes and materials are legible. Medical reports presented in this form and not on Form 107 shall not be considered as the direct testimony of a physician through a medical report pursuant to KRS 342.033, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(2) A defendant may file an answer to the plaintiff's application for adjustment of an injury claim (Form 101) within twenty (20) days after the date of service upon him of the application, but no such answer is required. If none is filed, all of the allegations of the application will be deemed to be denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied by the answer shall be deemed to be in disagreement.

(3) If any defendant in an application for adjustment of injury claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within twenty (20) days after the date of issuance of the scheduling order by the Department of Workers' Claims, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon the issuance of a scheduling order by the Department

of Workers' Claims, all parties may begin discovery and proof. All parties may take discovery and proof before or within sixty (60) days from the date of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; thereafter, the plaintiffs may take rebuttal discovery and proof for an additional fifteen (15) days.

All parties shall be furnished with copies of all medical reports and vocational evaluation reports within thirty (30) days of the examination or evaluation by the party requesting the examination or evaluation.

(5) Within thirty (30) days after an application for adjustment of an injury claim is filed, the commissioner shall assign the case to an administrative law judge and schedule the time and place for the prehearing conference. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference. All parties shall be notified of the assignment and schedule by the commissioner.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) The original application for adjustment of an occupational disease claim (Form 102) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106);

(d) Two (2) written medical reports supporting the claim (Form 108) in compliance with KRS 342.316(2)(b)1.

(2) Within sixty (60) days after the date of service upon him of an application for adjustment of an occupational disease claim (Form 102), unless for good cause shown the administrative law judge has granted an extension of time, each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for adjustment of an occupational disease claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when retraining incentive benefits are sought.

(4) Upon being served with an application for adjustment of an occupational disease claim pursuant to KRS 342.316(2)(6)1a or KRS 342.732 (Form 102), a defendant may have the plaintiff examined by medical experts and evaluated by vocational experts, at the defendant's expense. All parties shall be furnished with copies of all medical reports and vocational evaluations within thirty (30) days of the date of the examination or evaluation and within the sixty (60) day discovery time. During this sixty (60) day discovery time, the defendants may depose the plaintiff for discovery purposes. If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist an application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the prehearing conference, and at the same time issue a schedule for the taking of discovery and of proof by deposition prior to the prehearing conference. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiffs may take discovery and proof for an additional fifteen (15) days. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference.

(5) When an application for adjustment of an occupational disease claim (Form 102) is filed and one (1) or more of the medical reports filed with the application pursuant to KRS 342.316 contains the findings of more than one (1) physician, the findings of one (1) physician concerning the x-ray examination, one (1) physician concerning the spirometric testing, and one (1) physician concerning the comprehensive clinical examination shall together constitute one (1) "written medical report", and cross-examination by deposition may be taken of all the three (3) physicians contributing to any "written medical report" and be introduced as the "direct testimony" of one (1) physician for the purposes of KRS 342.033. Up to three (3) "written medical reports" may be introduced by any party to an occupational disease claim or application for retraining incentive benefits without prior consent from the administrative law judge, as required by KRS 342.033.

Section 7. Application for Retraining Incentive Benefits. (1) The original application for retraining incentive benefits (Form 103) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106) in compliance with KRS 342.020(4);

(d) Two (2) x-ray reports complying with KRS 342.316.

(2) Within sixty (60) days after the date of service upon him of an application for retraining incentive benefits (Form 103), each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for retraining incentive benefits date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when rehabilitation incentive benefits are sought.

(4) If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist the application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the hearing, and at the same time shall issue a schedule for the taking of proof. During this proof-taking time, direct testimony may be taken from the physicians who conducted the examination, and proof may be taken by deposition concerning any special defenses pleaded by the employer at the time of filing of the notice of election to resist. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiff may take discovery and proof for an additional fifteen (15)

days. The hearing shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the hearing.

Section 8. Prehearing Conference. (1) The purposes of the prehearing conference are to expedite the processing of contested cases and to avoid whenever possible the need for a formal hearing. The conference is an informal procedure, presided over by the administrative law judge. No transcript of the proceedings of the conference shall be made. At the conference, every effort shall be made by all parties to dispose of controversies whenever possible, to narrow and define issues, and to facilitate prompt settlement of the claim. The parties shall exchange lists of known witnesses fifteen (15) days before the prehearing conference and final additions, if any, to the respective witness lists shall be made at least seven (7) days before the prehearing conference. The witness list shall give the name of each proposed witness together with a summary of the prior testimony or anticipated testimony of the witness. For medical witnesses, this summary shall include at a minimum a description of the diagnosis made by the witness and the physical findings and diagnostic studies upon which the diagnosis is based, as well as the functional impairment rating assessed by the witness and any work-related restrictions imposed.

(2) Within sixty (60) days after the date of the commissioner's scheduling order, the defendant employer shall file with the administrative law judge, with copies to opposing parties, the plaintiff's payroll records with the defendant employer for each of the fifty-two (52) weeks preceding the date of the alleged injury or the date of the alleged last exposure in accordance with the provisions of KRS 342.140 unless good cause is shown for the failure to file the payroll records or the parties, by joint stipulation, agree upon the employee's average weekly wage. Such payroll records or stipulation shall constitute evidence in the case.

(3) At the prehearing conference, the administrative law judge may limit witnesses for good cause shown.

(4) The plaintiff and his representative, the defendant employer/insurer or its representative, and the representatives of all other parties shall attend the prehearing conference. The representative of any party must have authority to resolve disputed issues and settle the claim at the conference. The administrative law judge may upon motion waive the requirement that the plaintiff shall attend the conference but only for good cause shown in the motion and with a showing that the plaintiff's representative will attend the conference with full authority to settle the claim.

(5) The representative of a party may seek rescheduling or postponement of a prehearing conference by motion filed at least fifteen (15) days prior to the schedule date of the conference, stating the reason for the request. A motion to postpone or reschedule shall be sustained only upon good cause shown at the discretion of the administrative law judge.

(6) If all parties agree upon a settlement prior to the prehearing conference, the settlement agreement shall be filed for the approval of the administrative law judge. If the agreement is approved by the administrative law judge, the prehearing conference shall be cancelled and notice of the cancellation served on all parties.

(7) If at the conclusion of the conference the parties have not reached agreement on all the issues, the administrative law judge shall prepare a stipulated summary of all contested and uncontested issues, which shall be signed by representatives of the parties and by the administrative law judge. This stipulation shall be filed, and only the contested issues shall be the subject of further proceedings before the administrative law judge.

(8) In the sole discretion of the administrative law judge upon motion of a party with good cause shown, the administrative law judge may order that additional discovery or proof by deposition be taken on a contested issue between the prehearing conference and the hearing. Taking of this proof shall not automatically be a valid reason for continuing the date for the hearing.

(9) If the claim is not settled, the administrative law judge shall schedule a date for the hearing on the claim at the prehearing conference. The date for the hearing shall be within sixty (60) days from the date of the prehearing conference. Representatives of the parties shall come to the prehearing conference prepared to schedule a hearing during the conference. The hearing date will not be changed except for good cause shown on motion of the representative requesting the change.

(10) If the parties agree upon a settlement at or after the prehearing conference but before the hearing, the settlement agreement (Form 110) shall be filed for the approval of the administrative law judge. The administrative law judge shall approve or disapprove the settlement agreement within ten (10) days of filing. If the agreement is approved by the administrative law judge, the hearing shall be cancelled and notice of the cancellation served on all parties.

Section 9. Interlocutory Relief. (1) The plaintiff may seek three (3) forms of interlocutory relief while his claim is in the process of consideration for adjustment.

(a) If the plaintiff is totally disabled, he may seek to have income benefits paid pursuant to KRS 342.730 while the claim is pending.

(b) He may seek to have medical and hospital bills paid pursuant to KRS 342.020 while the claim is pending.

(c) He may seek provision of rehabilitation services pursuant to KRS 342.710 while the claim is pending. The defendants may also request rehabilitation services for the plaintiff while the claim is pending.

(2) The plaintiff may seek one (1) or more forms of interlocutory relief by completing the appropriate section of the application for adjustment of claim. The plaintiff or defendants may seek interlocutory relief by motion if the need for interlocutory relief arises after the application is filed.

(3) If the plaintiff seeks interlocutory relief in his application for adjustment of claim or by motion at least twenty (20) days prior to the prehearing conference or if there is agreement of all parties, the request for interlocutory relief may be considered at or before the prehearing conference. If the motion is filed within twenty (20) days of the prehearing conference or after the prehearing conference but before the hearing, it may be considered at or before the hearing.

(4) One (1) or more of the forms of interlocutory relief described in Section 9(1) of this regulation may be granted by the administrative law judge if the plaintiff shows by means of affidavits, his own deposition, or other evidence of record that he is eligible for the interlocutory remedies being sought under KRS Chapter 342 and that if he does not receive the interlocutory relief sought he will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application. A defendant may be granted the right to provide rehabilitation services to the plaintiff while the claim is pending upon a showing that the plaintiff will benefit from the services and have a better chance of returning to work as a result.

(5) When the plaintiff seeks interlocutory relief, the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days from the date of the issuance of the scheduling order by the Department of Workers' Claims, or within twenty (20) days of the filing of any subsequent motion.

(6) When the plaintiff seeks interlocutory relief, the administrative law judge shall review all pleadings, affidavits, and other evidence in the record and at the prehearing conference or hearing may, in his discretion, hear oral arguments in support of each party's position. The administrative law judge shall render his decision, file it in the record, and serve it on all parties.

(7) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, the application shall be placed in abeyance, unless the plaintiff shows that he will be irreparably harmed thereby. While the

application is in abeyance, the parties shall submit in writing to the administrative law judge a report on the plaintiff's continued total disability every sixty (60) days. If, in the administrative law judge's discretion, new evidence shows that the plaintiff is no longer totally disabled, the administrative law judge may revoke the interlocutory payment of income benefits based on total disability and remove the claim from abeyance.

(8) No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits.

(9) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, an attorney's fee in the amounts authorized by KRS 342.320 but in no case to exceed twenty (20) percent of the weekly income benefit awarded may be ordered by the administrative law judge upon motion of the attorney. The administrative law judge may award the fee on a sixty (60) day basis, renewable for additional sixty (60) day periods if the interlocutory benefit is renewed pursuant to Section 9(7) of this regulation. All provisions of KRS 342.320 and Section 4(6) of this regulation must be complied with. The fee awarded shall be deducted in equal amounts from the weekly income benefits awarded and paid directly to the attorney awarded the fee at the beginning of each sixty (60) day period.

Section 10. Hearings. (1) If the parties have not arrived at a settlement prior to the scheduled hearing date, a hearing shall be held to complete proof on all contested issues set forth in the stipulated summary filed pursuant to Section 7(8) of this regulation.

(2) The administrative law judge to whom the case has been assigned shall conduct the hearing. No proof shall be taken following the hearing.

(3) The plaintiff shall appear at the hearing and shall present his testimony concerning the contested issues still before the administrative law judge, even if the plaintiff's testimony has previously been taken by deposition. Defendants may cross-examine. Other proof may be taken at the hearing only if it has not previously been taken by deposition.

(4) If the plaintiff fails to appear at the hearing of his claim and no good cause is shown for his failure to appear, the administrative law judge may dismiss the case for want of prosecution. If good cause is shown, the case may be continued until the plaintiff is able to appear.

(5) When a defendant or his representative fails to appear at the hearing, the hearing may proceed as scheduled.

(6)(a) At the conclusion of the hearing, the administrative law judge may take the application under submission immediately or request briefs from the parties to be filed according to a schedule announced by the administrative law judge at the hearing. Upon filing of the last brief scheduled or passage of the due date for that brief, the case shall stand submitted. Briefs filed with the administrative law judges shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages in length. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. The administrative law judge may announce his decision at the conclusion of the hearing and subsequently file his written opinion, serving it on the parties when filed, or the administrative law judge may defer his decision until he files the written opinion. In either case, a decision shall be rendered no later than ninety (90) days following the hearing, and the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

(b) A persistent or continuous failure to comply with paragraph (a) of this subsection may be considered by the board as cause for removal of the administrative law judge pursuant to KRS 342.230.

Section 11. Petitions for Reconsideration. (1) Within fourteen (14) days from the date the written opinion announcing an order, award, or decision is filed, any party may file a petition for reconsideration of the award, order, or decision. The petition shall clearly identify the error "patently appearing upon the face" of the award, order, or decision which the petitioner seeks to have corrected and set forth arguments and authorities supporting the correction sought.

(2) Any party may file a response to the petition within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall by order overrule or sustain the petition for reconsideration within ten (10) days after the date the responses are due.

(4) If the administrative law judge finds that the petition is frivolous, he may assess costs and attorney fees against the petitioner or his attorney.

(5) The filing of a timely petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon. Any notice of appeal filed prior to filing of a petition for reconsideration shall be held in abeyance until a ruling is made on the petition.

Section 12. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a written opinion, order or decision finally adjudicating a case, a party aggrieved by the opinion, order, or decision may appeal the opinion, order, or decision to the Workers' Compensation Board. Opinions, orders, or decisions of administrative law judges and of the (old) Workers' Compensation Board established pursuant to KRS 342.215(5) shall be appealed in this manner. A final adjudication as used in this section shall be determined according to the provisions of Civil Rule 54.02(1) and (2).

(2) The appeal shall be initiated by the filing of a notice of appeal. The notice of appeal shall style the appealing party first as the "petitioner" and all other parties against whom the appeal is being taken as the "respondents." The Workers' Compensation Board case number shall be retained in the petition and in all other pleadings related to the appeal to the board. The administrative law judge who rendered the opinion, order or decision appealed from or the (old) Workers' Compensation Board shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b).

(3) Any party other than the petitioner in the appeal may file a cross-appeal. All cross-appeals shall be filed by notice of cross-appeal within ten (10) days after notice of appeal is served. If a cross-appeal is filed, the style of the appealed and cross-appealed case shall designate the parties as appropriate (i.e., petitioner-cross-respondent). The Workers' Compensation Board number shall remain the same.

(4) The notice of appeal or cross-appeal, and enough copies for service on all respondents, shall be filed with the commissioner. The commissioner shall cause all respondents to be served by first class mail with a copy of the notice of appeal or cross-appeal. All subsequent pleadings shall be served on the respondents as provided in Section 3(3) of this regulation.

(5) When a notice of appeal is filed, the record in the case shall be transferred to the Workers' Compensation Board in its entirety, unpaginated. All references to specific evidence in the record shall be by the title of the evidence referenced and the page number at which the specific entry occurs (i.e., Deposition of Dr. A. B., p. 17.)

(6) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue before the board. All testimony concerning the issue shall be transcribed and placed in the record, and notice of filing of the transcript shall be given to all parties by the commissioner. All subsequent time in such a case shall be calculated from the date the transcript is filed instead of the date of filing of the notice of appeal.

(7)(a) The petitioner's brief shall be filed with the board within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Rule 76.12(4)(c) of the Kentucky Rules of Civil Procedure except that no index shall be required and the only appendix shall be a copy of the decision appealed from, including the decision of the administrative law judge, all petitions for reconsideration of the opinion, all rulings on

petitions for reconsideration, and copies of all cited cases from federal courts and foreign jurisdictions.

(b) The failure of the petitioner to file petitioner's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of good cause:

1. A dismissal of the appeal after failure to respond to a show cause order served upon the attorney and client;
2. The striking of the petitioner's brief;
3. The imposition of a fine on petitioner's counsel of not more than $500.

(8)(a) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed or due. The organization and contents of the respondent's brief shall be as provided in Rule 76.12(4)(d) of the Kentucky Rules of Civil Procedure, except that no index shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration and copies of all cited cases from federal courts and foreign jurisdictions. If a respondent is also a cross-petitioner, a combined brief shall be filed addressing issues raised by the petitioner's brief and by the cross-appeal.

(b) The failure of the respondent to file respondent's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of good cause:

1. The reversal of the opinion and award if the petitioner's brief and the record reasonably appear to sustain such action;
2. The striking of the respondent's brief;
3. The imposition of a fine on respondent's counsel of not more than $500.

(9) The petitioner's reply brief may be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall be filed addressing issues raised by the response and issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required.

(11) The petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each in overall length. Reply briefs shall be limited to five (5) pages in overall length. Combined briefs shall be limited to twenty (20) pages each in overall length. The requirements of this rule with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. All pleadings shall be typewritten and conform to the requirements set forth in Rule 7.02(4) of the Kentucky Rules of Civil Procedure. Pleadings shall be filed without covers, but the style of the case, including the board number and the title of the pleading, shall appear on the first page of the pleading.

(12) When all briefs have been filed or the due date is past on the last brief due, any party may by motion move for submission of the appeal to the board for decision. Upon issuance of the board's order, the case shall stand submitted.

(13) Within thirty (30) days of the filing of the board's order of submission, the board shall enter its decision affirming, modifying, or setting aside the decision, order, or award appealed from, or, in its discretion, remand the claim to the administrative law judge for further proceedings in conformity with the direction of the board. There shall be no motion for reconsideration.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Rule 76.25, Kentucky Rules of Civil Procedure.

(15) Every application for an order of the board shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(16) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(17) All motions filed with the board subsequent to the original notice of appeal shall include the certificate of the party or attorney who filed the motion stating the date and manner of service of a copy of the motion upon the other parties. Service of these motions shall be made in one of the ways provided in Rule 5.02, Kentucky Rules of Civil Procedure.

(18) The opposing party may file a response, accompanied by a certificate of service, within ten (10) days after the date the motion was filed with the board.

(19) Except for motions that call for final disposition of an appeal before the board, any member of the board designated by the chairman may dispose of any motion; and any intermediate order of a procedural nature pending final disposition of a proceeding pending before the board may be issued on the signature of any member of the board.

Section 13. Medical Reports. (1) As provided in KRS 342.033, any party may introduce direct testimony (proof) from a physician through a written medical report, subject to the limitations of KRS 342.033, Section 5(3) of this regulation, and the scheduling order issued by the commissioner pursuant to Section 5 of this regulation.

(2) Any written medical report sought to be introduced as evidence shall be submitted on a Form 107 (injury) or Form 108 (occupational disease) whichever is appropriate, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(3) Any written medical report sought to be introduced as evidence shall be signed by the physician making the report, bearing an original signature. A reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report.

(4) Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, this section may be complied with by a statement of the physician's medical qualifications index number on the record in lieu of attaching a statement of the physician's qualifications.

(5) Any narrative in a written medical report on a Form 107 or Form 108 sought to be introduced into evidence shall be typewritten. Any written medical report or any attachment to a written medical report, such as spirometric tracings, shall be clearly legible in the original and on the copies served on other parties.

(6) The written medical reports required by KRS 342.316(2)(b)1a shall be filed with the application for adjustment of an occupational disease claim as required by that section but shall not be considered evidence unless a motion for that purpose is made.

(7) Any party may file, with notice to the other parties, the testimony of three (3) physicians, taken either by deposition or medical report, which shall be admitted into evidence without further order. If any party objects to the admissibility of the evidence, the administrative law judge shall then rule on its admissibility.

(8) All other written medical reports shall be introduced by motion for admission. The written medical report shall be attached to the motion. The party seeking admission of the report may also file a memorandum in support of the motion. The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(9) Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the report or the motion for admission. Grounds for the objection shall be stated with particularity. The objecting party may file a memorandum in support of his objection.

(10) If a written medical report is admitted as direct testimony, any adverse party may depose the physician making the written report as cross-examination concerning it, and the deposition shall be filed as proof without a motion.

Section 14. Continuances, Extensions, and Motions to Hold in Abeyance. (1) Continuances of hearings and prehearing conferences may be granted by the administrative law judge upon motion supported by affidavits stating facts making a proper showing of good cause for a continuance. A motion for a continuance must be filed no later than twenty (20) days prior to the conference or hearing unless there is a showing of emergency or circumstances beyond the control of the requesting party which prohibited timely filing of the motion. The opposing parties may have ten (10) days from the filing date of the motion to respond with a brief memorandum with affidavits in support of their position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon showing of circumstances preventing the party moving for an extension from timely taking discovery or proof by deposition. The motion for extension of time must be filed no later than five (5) days before the deadline sought to be extended. The motion for extension of time and supporting affidavits must clearly set forth the following:

(a) A showing of timely and diligent efforts by counsel to take the discovery or proof by deposition in question must be detailed.

(b) The facts which prevent taking of the needed discovery or proof by deposition must be detailed.

(c) The date of availability of the evidence needed and the probability of its production must be detailed.

(d) Where possible, supporting documentation giving rise to the need for the extension should be filed with the motion.

(3) In the absence of unusual circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(4) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff or to all defendants should an extension be granted to a defendant.

(5) The provisions of this section shall apply to motions requesting that a claim be held in abeyance pending settlement or for any other reason.

Section 15. Stipulation of Facts and Judicial Notice. (1) Stipulation of facts which are not in issue is mandatory, and the refusal without good cause to stipulate facts which are not in issue, within the sound discretion of the administrative law judge, may result in assessment of costs against the party who without good cause has refused to stipulate to routine matters not in issue. The assertion of the fact that a party has not had sufficient time or opportunity to ascertain the facts will not be necessarily considered "good cause" within the meaning of this regulation.

(2) Every party to a stipulation shall be considered bound to the same. For good cause shown, however, any party may be relieved of a stipulation he has made provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing. Upon granting relief from a stipulation, the administrative law judge shall grant a continuation of the hearing and shall schedule additional discovery or proof time for the opposing party or parties to complete their discovery or proof so as to prevent prejudice or surprise.

(3) At the prehearing conference, the administrative law judge shall ask the appropriate questions in order to determine the reasons for an inability or unwillingness to stipulate. The plaintiff and the defendants have the joint responsibility of resolving jurisdictional issues and preaward payment of compensation and explaining why these cannot be stipulated.

(4) The administrative law judge will take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(5) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should the employer or any other person against whom a claim is filed not have insurance coverage or qualify as a self-insurer, the commissioner within thirty (30) days after the filing of the claim shall certify to the file that the defendant or any other person against whom a claim has been filed has failed to secure payment of compensation as required by KRS Chapter 342 and shall notify the administrative law judge and all parties by service of a copy of the certification of no coverage.

Section 16. Evidence: Rules Applicable. (1) The same rules of evidence that apply in judicial proceedings and that are governed by the common law and the statutes in effect in this Commonwealth apply in all hearings and depositions taken to be used in cases before the administrative law judges.

(2) An exception to the above rule applies in medical reports submitted by and depositions taken of evaluating physicians who are nontreating physicians. In those instances, the nontreating physician is permitted to use the case history related to him by the patient and the subjective symptomatology related to him by the patient in arriving at and formulating his opinion as to causation and disability.

Section 17. Discovery and Depositions. (1) The parties may obtain discovery and take depositions in accordance with the provisions of Rules 26 to 37, inclusive, of the Kentucky Rules of Civil Procedure, except for Rules 27, 33, and 36 which are not adopted by the board and which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given and provided the notice of deposition contains the following information:

(a) That the deposition is being taken by telephone;

(b) The address and telephone number from which the telephone call will be placed to the witness;

(c) The address where the witness will be giving the deposition and the number of the telephone on which the witness will receive the deposition call; and

(d) That all opposing parties may appear to participate at the deposition either at the place from which the deposition is being given by the witness or at the place the telephone call is placed to the witness.

(3) After a party has served notice of its intention to take a deposition by telephone, any opposing party may participate in the deposition for cross-examination by conference call from places other than where the deposition is given by the witness or where the call is placed to the witness but must contribute its proportionate cost of the conference telephone call.

(4) The commissioner shall establish a medical qualifications index, and an index number will be assigned to a physician upon the

filing by the physician of his qualifications. Any physician who has been assigned an index number may testify to the assigned number at deposition in lieu of stating his qualifications. Previously filed medical qualifications may be revised or updated by submitting such revision to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of the physician at the deposition.

Section 18. Appearances. (1) Only attorneys-at-law duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself only but shall not, either directly or indirectly, represent or appear in behalf of any legal entity other than himself, except as provided in subsection (2) of this section.

(2) If no prior application for adjustment of claim has beenfiled in any dispute involving KRS 342.020 or 342.035, any provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, insurance adjuster, or surety for employer may contest the same without representation by an attorney through the appearance of a person who is an officer of or regularly employed in a managerial capacity by a corporation or partnership which is involved in the dispute.

(3) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel.

(4) Every pleading shall be signed by the person filing the pleading together with his full address and telephone number(s).

Section 19. Withdrawal of Records. (1) No paper or other portion of any original record of the board shall be withdrawn except on order of the administrative law judge.

(2) All physical exhibits, including x-rays, will be disposed of sixty (60) days after the case is finally closed, unless the filing party makes arrangements to claim the exhibit prior to that time. If the unclaimed exhibit has no money value, it will be destroyed; if the unclaimed exhibit has a value of more than $100, it will be sold as surplus property; the unclaimed exhibit will be donated to an appropriate state agency if it has a value of less than $100; if the unclaimed exhibit has historic or museum value, it will be sent to the state archives.

Section 20. Routine Records Admission. Any party may file in the record of a case any routine hospital, armed forces and Social Security records. These shall be made part of the record and considered for their statistical content only, and any opinion contained therein shall be stricken and not considered. A party, however, may depose the proper agent in the manner provided in these regulations in order to have these records admitted as to any opinion contained therein.

~~[Section 21. Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this regulation by reference.]~~

Section **21.** [~~22.~~] Retraining Incentive Benefits. If an applicant for retraining incentive benefits is working in the coal industry at the time his application is filed, the insurance company responsible is the one insuring the applicant's employer on the date of the filing. Otherwise, the insurance company responsible is the one insuring the applicant's employer on the date of his last exposure.

Section **22.** [~~23.~~] Forms. (1) Forms 101 **(eff. 4/19/88)**, 102 **(eff. 4/19/88)**, 103 (rev. 1/8/92), 104 **(eff. 4/19/88)**, 105 **(eff. 4/19/88)**, 106 **(eff. 4/19/88)**, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109 **(eff. 4/19/88)**, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101 **(eff. 4/19/88)**, 102 **(eff. 4/19/88)**, 103 (rev. 1/8/92), 104 **(eff. 4/19/88)**, 105 **(eff. 4/19/88)**, 106 **(eff. 4/19/88)**, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109 **(eff. 4/19/88)**, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] is filed herewith and incorporated by reference.

(3) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor-The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section **23.** [~~24.~~] Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation which has been awarded a claimant in the case where the defendant-employer, or any other party liable for the payment thereof, has not secured payment of compensation as provided for by KRS Chapter 342 shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the defendant-employer, or any other person liable for payment of the action, judgment has been rendered thereon, and there has been default in payment of the judgment by the defendant-employer, or any other party liable for payment thereof, except the uninsured employers' fund.

(2) When the procedure provided in subsection (1) of this section has been complied with, the claimant may file a motion with the administrative law judge, together with proof of compliance with the requirement of subsection (1) of this section, requesting that the administrative law judge order payment from the uninsured employers' fund in accordance with KRS 342.760. Upon satisfactory proof of such compliance, the administrative law judge shall enter an order directing payment of compensation or any portion thereof from the uninsured employers' fund.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim or award approved by the board pursuant to KRS 342.265, or the payment of its proportionate share of a claim or award by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from the defendant-employer upon a showing that the defendant-employer has filed a petition in bankruptcy in the United States Bankruptcy Court under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section **24.** [~~25.~~] Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) The predicted normal values of FVC and $FEV_1$, which are identical in both the 1984 and 1988 editions of the American Medical Association Guidelines, are given in graph form with ages and heights given in even years and even centimeters. The guidelines are silent as to the determination of the proper predicted values when the plaintiff's age is in an odd year or his height is in odd centimeters.

(2) If the plaintiff's age at the time of the exam is an odd year, the next highest even year shall be used.

(3) The plaintiff's height, as measured in his stocking feet, shall

be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

~~[Section 26. Resolution of Medical Fee Disputes. (1) Any employee, provider of medical services, employer, insurance carrier, self-insured, self insured group, self insured group administrator, or surety for employer, whether a natural person, partnership, or corporation, may seek, by request (Form 112), resolution of a dispute regarding the payment or nonpayment of medical expenses before an application for adjustment of claim is filed.~~

~~(2) The movant shall file with his request affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought. The opposing party may file, within twenty (20) days after notice of the request a response, if any, along with affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought.~~

~~(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.~~

~~(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has so brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.~~

~~(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of this regulation.]~~

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: October 26, 1992
FILED WITH LRC: November 13, 1992 at noon

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

**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 **or an administrative law judge's** [~~prior~~] written consent. Such consent shall not be unreasonably withheld.
**(4) This regulation does not prohibit the direct utilization of licensed medical professionals acting within the scope of their authority.**

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.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Public Service Commission**
**(As Amended)**

**807 KAR 5:001. Rules of procedure.**

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This administrative regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be

produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.

(2) Procedure for determining confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.

(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.

(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully

the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this administrative regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this administrative regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:

(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

(b) A fully forecasted test period and shall include:

1. A statement of the reason the adjustment is required;

2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);

3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;

5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;

7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

10. For the purposes of this administrative regulation, an affiliate is an entity that:

a. Is wholly owned by a utility; or

b. In which a utility has a controlling interest; or

c. That wholly owns a utility; or

d. That has a controlling interest in a utility; or

e. That is under common control with the utility.

11. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and

b. Exercises such power:

(i) Through one (1) or more intermediary companies, or alone; or

(ii) In conjunction with, or pursuant to an agreement; or

(iii) Through ownership of ten (10) percent or more of the voting securities; or

(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or

(v) Contract; or

(vi) Any other direct or indirect means.

(2) Notice of intent. Utilities with gross annual revenues greater than $1,000,000 shall file with the commission a written notice of

intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.

(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;

(c) Electric, gas, water and sewer utilities shall include the effect [~~affect~~] upon the average bill for each customer class to which the proposed rate change will apply;

(d) Local exchange companies shall include the effect [~~affect~~] upon the average bill for each customer class for the proposed rate change in basic local service;

(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;

(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;

(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and

(i) The commission may grant a utility with annual gross revenues greater than $1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.

(4) Manner of notification.

(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.

(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.

(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:

1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;

2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or

3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.

(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.

(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.

(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.

(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.

(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;

(b) If the utility has gross annual revenues greater than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the effect [~~affect~~] that the new rate(s) will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water or sewer service the effect [~~affect~~] upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is a local exchange company the effect [~~affect~~] upon the average bill for each customer class for the proposed rate change in basic local service;

(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

[~~(j) The most recently filed federal and state income tax returns;~~]

(j) [~~(k)~~] A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) [~~(l)~~] The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

[~~(m) A quantified explanation with proper support for all proposed price changes, escalation factors, and changes in activity levels;~~]

(l) [~~(m)~~] [~~(n)~~] The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) [~~(n)~~] [~~(o)~~] The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(n) [~~(o)~~] [~~(p)~~] A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test

period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

(o) ~~[(p)]~~ ~~[(q)]~~ A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(p) ~~[(q)]~~ ~~[(r)]~~ Prospectuses of the most recent stock or bond offerings;

(q) ~~[(r)]~~ ~~[(s)]~~ Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) ~~[(s)]~~ ~~[(t)]~~ The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

~~[(t) [(u)] If the utility is a wholly-owned subsidiary, the most recent consolidated federal income tax return of the utility's parent, consolidated financial statements of the utility's parent and any supporting schedules of the jurisdictional utility;]~~

(s) ~~[(u)]~~ ~~[(v)]~~ Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;

(t) ~~[(v)]~~ ~~[(w)]~~ If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon**, including other regulatory approval,** to demonstrate that each amount charged, allocated or paid during the test period was reasonable;

(u) ~~[(w)]~~ ~~[(x)]~~ If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) ~~[(x)]~~ ~~[(y)]~~ Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments;

(e) The number of customers to be added to the test period - end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast**, except for the correction of mathematical errors,** unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application ~~[except for the correction of mathematical errors]~~.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12)

months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

~~[(p) The most recently filed federal and state income tax returns;~~

~~(q) The most recently filed consolidated federal income tax return of the utility's parent;]~~

**(p)** ~~[(r)]~~ The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;

**(q)** ~~[(s)]~~ The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

**(r)** ~~[(t)]~~ The quarterly reports to the stockholders for the most recent five (5) quarters;

**(s)** ~~[(u)]~~ The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;

**(t)** ~~[(v)]~~ A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

**(u)** ~~[(w)]~~ If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, **including other regulatory approval,** to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

**(v)** ~~[(x)]~~ If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

**(w)** ~~[(y)]~~ Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) All applications seeking a general adjustment in rates

supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission. [:]

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements **(exclusive of dividends per share or earnings per share)**, revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request. [~~Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 8 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:~~

~~(a) Financial exhibit (see Section 6 of this regulation).~~

~~(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.~~

~~(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.~~

~~(d) A statement in full of the reason why the adjustment is required.~~

~~(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.~~

~~(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).~~

~~(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) of this section, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:~~

~~(a) Total amount of interest charged to construction.~~

~~(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.~~

~~(c) Details of any apportionment used.~~

~~(d) Monthly revenues and operating expenses.~~]

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the

acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this administrative regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.

(b) Answer.

(c) Application.

(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

| | | |
|---|---|---|
| (Insert name of complainant) | ) | |
| Complainant | ) | |
| | ) | No. _____ |
| vs. | ) | (To be inserted by the |
| | ) | secretary) |
| | ) | |
| (Insert name of each defendant) | ) | |
| Defendant | ) | |

COMPLAINT

The complaint of (here insert full name of each complainant)

respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of ____, 19___ .

(Name of each complainant)

(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

| | | |
|---|---|---|
| (Insert name of complainant) COMPLAINANT | ) | |
| | ) | No._____ |
| vs. | ) | (To be inserted by the |
| | ) | secretary) |
| (Insert name of each defendant) DEFENDANT | ) | |

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

(Name of defendant)

(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

| | | |
|---|---|---|
| In the matter of the application of (here insert name of each applicant) for (here insert desired order, authorization, permission or certificate, thus: "Order authorizing issue of stocks and bonds") | ) | No._____ |
| | ) | (To be inserted by the |
| | ) | secretary) |

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____,19___.

(Name of applicant)

(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

| | | |
|---|---|---|
| In the matter of adjustment of rates of the (state name of corporation). | ) | No._____ |
| | ) | (To be inserted by the |
| | ) | the secretary) |

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19___, in conformity with the attached schedule.

(See Section 9 of this administrative regulation for required information.)

(Name and address of company)

(Name and address of attorney)

GEORGE EDWARD OVERBEY, JR., Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at 10 a.m.

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

**810 KAR 1:025. Licensing thoroughbred racing.**

RELATES TO: KRS 230.280, 230.290, 230.300, 230.310, 230.320
STATUTORY AUTHORITY: KRS 230.215
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. (1) Representations made on or with license application shall be complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all **[~~such~~]** decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal.

**(a)** **[~~All~~]** Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to**:**

**1.** Findings of fact as occurred during and incident to the running of a race**;** and

**2. A** **[~~as to~~]** determination of the extent of disqualification of

horses in a race for fouls committed during the race.

(b) [All such] Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.

(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including[, without limiting,] tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.

(b) [, and] Licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(b) Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering.

Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any statute or administrative regulation dealing with a controlled substance;

(3) Falsification, misrepresentation, or omission of required information in a license application to the commission.

(a) [;] Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or

(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(4) Making false or misleading statements to the commission or the stewards in the course of an investigation;

(5) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in **these activities** [~~such activity~~];

(7) Person less than sixteen (16) years of age;

(8) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;

(10) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;

(11) Discontinuance of or ineligibility for activity for which license was issued;

(12) Possession on association grounds, without written permission from the commission or stewards, of:

(a) Firearms;

(b) Battery, buzzer, or electrical device; or

(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

(13) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or

(b) Narcotics, medication, or drugs, or substance which could be used to alter the speed of a horse in a race;

(14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while **these** [~~such~~] persons are in the discharge of their duties;

(15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized; **or**

(20) Violation of any administrative regulation of the commission, or aiding or abetting any person in violation of any [~~such~~] administrative regulation.

Section 4. License Applications for Associations. **Persons or legal entities** [~~Any person or legal entity~~] desiring to conduct thoroughbred racing in the Commonwealth **shall** [~~may~~] apply to the commission for **an** association license. The application shall be made in writing on application forms prescribed by the commission. Applications shall be filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. **Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.** The application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by other physical information as the commission may require;

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with **the** [~~such~~] degree of ownership or type of interest shown;

(3) Names and addresses of [~~all~~] persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;

(4) [~~Any~~] Corporations, partnerships, or other legal **entities** [~~entity~~] which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with **the** [~~such~~] degree of ownership or type of interest [~~thereunto~~] pertaining **to the ownership or interest**; [~~No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.~~]

(5) [~~(3)~~] Days and hours [~~thereof~~] on which racing is requested to be conducted; and number of races to be run on each day;

(6) [(4)] Names of racing officials and persons responsible for track security and fire protection;

(7) [(5)] Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;

(8) [(6)] An operating report on forms prescribed by the commission if **the** applicant is currently licensed; **or**

(9) [(7) Such] Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct racing.

Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(b) The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

[(4) Fingerprint identification shall be required of all licensed owners, trainers, and jockeys. All owners, trainers, and jockeys shall reimburse the commission for the full cost of fingerprinting and related investigative procedures.] [license unless waived by the commission. Fingerprint identification shall not be required of absentee owners and casual delivery personnel who do not enter the stable area.]

(4)(a) [(6)] Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(b) [No] Applications shall **not** be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(5)(a) [(6)] Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.

(6) [(7)] Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(7) [(8)] Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(8) [(9)] The following annual fees shall accompany the application and shall not be refundable:

(a) Thirty-five (35) dollars - owner license, trainer, assistant trainer, veterinarian, dental technician, blacksmith, farrier, or apprentice farrier license; jockey, farm manager/agent, racing official, steward, [commission veterinarian, commission supervisor of pari mutuel betting, commission director of security, commission license administrator, commission inspector, commission horse identifier; commission chemist,] testing laboratory employee; racing department employee license, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer;

(b) Twenty-five (25) dollars - veterinarian assistant, stable-area supplier license (suppliers of horse feed, tack, medication, or food vendors); person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, jockey apprentice;

(c) Forty-five (45) dollars - jockey agent;

(d) Ten (10) dollars - association employee and occupational license, [valet, jockey room custodian, clerk of scales, entry clerk,] photo finish operator, film patrol or video tape operator and projectionist, [flagman, or outrider,] association security department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees, admission department manager and employees; concessions manager and employees, parking manager and employees; all other persons employed by the association; vendor employees;

(e) Five (5) dollars - stable employee license (foreman, exercise boy, groom, hotwalker, watchman, or pony boy);

(f) Twenty (20) dollars - mutuel department employee license[; manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee];

(g) Thirty (30) dollars - life colors.

Section 6. Licensing Committee. (1) The commission may appoint a licensing committee including the executive director and commission steward or their designated representative.

(2) The licensing committee shall review all applications for all licenses, and forward **the** [all such] applications to the commission with recommendations [thereon], subject to security checks, for final action.

(3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which **a** license application was made pending administrative processing and final action on [such] license application by the commission.

Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 8. Possession of License Required. [No] Persons required to be licensed by these administrative regulations **shall not** [may] participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. [All] Licenses specified under Section **5** [7](9)(b) **through** [to] (f) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 9. Applicability of Rules and Rulings to Household.

Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by the affected person shall in no way circumvent the intent of the administrative regulation, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 10. Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of his intention at least fifteen (15) days before termination.

(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.

(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties.

(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

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

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

**811 KAR 1:180. Personnel to be licensed; fees.**

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700, 230.710
STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the licensing of personnel and the fees to be charged for licensing.

Section 1. **The following persons or entities** [~~Every person holding a permit to conduct pari-mutuel wagering in this state and every person who is a member of an association holding such a permit and every person who is an officer of a corporation which holds such a permit, and every employee of the holder of such permit in any capacity connected to any extent with the pari-mutuel wagering business in this state, and all owners, trainers, drivers, grooms, managers, agents, blacksmiths, veterinarians, and like persons who actively participate in the racing activities of any such permit holders,~~] shall furnish the commission, on demand, for its files, **their** [~~his~~] fingerprints and photograph:

**(1) A person who holds a permit to conduct pari-mutuel wagering in this state;**

**(2) A person who is a member of an association holding a permit and every person who is an officer of a corporation which holds such a permit;**

**(3) An employee of the holder of a permit in any capacity connected to any extent with the pari-mutuel wagering business in this state; and**

**(4) Owners, trainers, drivers, grooms, managers, agents, blacksmiths, veterinarians, and like persons who actively participate in the racing activities of any such permit holders.** [~~, which~~] [~~Fingerprints [and photograph] shall be furnished by owners, trainers, and drivers at the time application is made for license from this commission. All owners, trainers, and drivers shall reimburse the commission for the full cost of fingerprinting and related investigative procedures.~~]

Section 2. **A person shall not** [~~No one shall~~] be permitted to enter in or about the grounds, stables or stable enclosures who does not have in his possession a license issued by the commission as owner, trainer, driver, apprentice, agent, stable foreman, groom, veterinarian, or proper credentials issued by the association, and a full record of these credentials shall be compiled and open to inspection at all times.

Section 3. **(1) At a pari-mutuel racing meeting persons listed in subsection (2) of this section shall procure a license from the commission.** [~~At all pari-mutuel racing meetings all persons in the appended list shall procure a license from the commission. The annual fee for such licenses shall be paid at the time of the filing of the application and shall be as follows:~~]

[~~(1) Ownership fees:~~

~~Corporation or Limited Partnership with 1,001 or more shareholders or limited partners . . . . . $500~~

~~Corporation or Limited Partnership with 201-1000 shareholders or limited partners . . . . . 200~~

~~Corporation or Limited Partnership with 21-200 shareholders or limited partners . . . . . 100~~

~~Corporation or Limited Partnership with 1-20 shareholders or limited partners . . . . . 25~~

~~Each officer, director, and shareholder or limited partner owning five (5) percent or more interest in the corporation . . . . 10~~

~~Individual Owner . . . . . 10~~

~~(2) Participant fees:~~]

**(2) The annual fee for a license shall be paid at the time of the filing of the application and shall be as follows:**

| | | | |
|---|---|---|---|
| Owner | $35 | Occupationals | $10 |
| [~~Stable License~~ | ~~$50~~] | Announcer | 10 [~~25~~] |
| [~~Owner driver~~ | ~~25~~] | Assistant race secretary | 35 [~~12~~] |
| [~~Owner driver trainer~~ | ~~25~~] | Assistant starting judge/gate driver | 35 [~~12~~] |
| Driver | 35 [~~25~~] | Charter | 10 [~~25~~] |
| Driver-trainer | 35 [~~25~~] | Clerk of course | 10 [~~25~~] |
| [~~Owner trainer~~ | ~~25~~] | Farrier | 35 [~~25~~] |
| Trainer | 35 [~~25~~] | Mutuel employees | 20 [~~12~~] |
| Judges-associate | 35 [~~25~~] | [~~Program director~~ | ~~25~~] |
| Judges-paddock | 35 [~~25~~] | Timer | 35 [~~12~~] |
| Judges-patrol | 35 [~~18~~] | Veterinarian | 35 [~~25~~] |
| Judges-presiding | 35 [~~25~~] | [~~Miscellaneous~~ | ~~12~~] |
| Judges-starting | 35 [~~25~~] | Groom | 5 |
| Race secretary | 35 [~~25~~] | Vendor/Vendor Employee | 25 |
| Security guard | 10 [~~12~~] | | |
| Director of Security | 10 [~~25~~] | | |
| Mutuel Manager | 20 [~~25~~] | | |

Section 4. Should a licensee lose a permit or should a permit in some manner be destroyed, **the** [~~such~~] licensee **shall** [~~may~~] apply for a duplicate permit for a fee of five (5) dollars[~~, except a grooms license shall be duplicated for one (1) dollar~~].

Section 5. If the commission, in its discretion, shall find that the experience, character and general fitness of the applicant are such that the participation of **the** [~~such~~] person in harness horse race meets will not be consistent with the public interest, convenience and

necessity and with the best interests of racing generally in conformity with the purposes of the harness racing act, it **shall** [~~may~~] there upon deny a license.

[~~Section 6. If a license has previously been issued by the United States Trotting Association then upon payment of the license fee set out in Section 3 of this regulation, said license may be approved by an official stamp of the commission without the requirement on the part of said applicant to submit data required by Section 1 of this regulation.~~]

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

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

**811 KAR 2:020. Licensing procedures.**

RELATES TO: KRS 230.**210 to 230.217** [~~610 to 230.770~~]
STATUTORY AUTHORITY: KRS **230.225 to 230.360** [~~13A.010 et seq.~~]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the licensing procedures and requirements.

Section 1. License Required. **(1) A** [~~No~~] person, legal entity, or association shall **not** conduct any Arabian, quarter horse or appaloosa race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission.

**(2) A** [~~No~~] person shall **not** participate in Arabian, quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license [~~therefor~~] from the commission.

Section 2. Conditions Precedent to Issuance of License. **(1)** Arabian, quarter horse and appaloosa racing and participation therein in the Commonwealth are privileges, not rights, granted only by the commission by license subject to the [~~hereinafter set out~~] conditions precedent **established in this section**.

**(2)** Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply **with these conditions** [~~therewith~~] shall be grounds for immediate voidance or revocation of such license:

**(a)** [~~(1)~~] Representations made or with license application are complete and correct.

**(b)** [~~(2)~~] Licensee shall abide by all rulings, and decisions of the stewards and all [~~such~~] decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal [~~thereto~~].

**1.** [~~All~~] Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to**:**

**a.** Findings of fact as occurred during and incident to the running of a race; and

**b. A** [~~as to~~] determination of the extent of disqualification of horses in a race for fouls committed during **the** [~~such~~] race**.**

**2.** [~~, and all such~~] Excepted rulings and decisions by the stewards shall be final with no right of review [~~thereof~~] by the commission or courts.

(3)**(a)** Licensee shall consent to a reasonable search of his [~~person and~~] property in his possession by the commission or its representatives, **the** [~~such~~] property being restricted to that on association grounds and including[~~, without limiting thereby,~~] tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort**.**

**(b)** [~~, and~~] Licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.

(4)**(a)** A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard **the** [~~such~~] horses from tampering.

**(b)** Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of **the** [~~such~~] horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for **a licensee** [~~same~~] to conduct an Arabian, quarter horse or appaloosa race meeting on [~~such~~] days as the commission may deem appropriate**.** [~~, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, or improve the Arabian, quarter horse and appaloosa industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.~~]

[~~Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in Arabian, quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.~~]

Section **4.** [~~5.~~] Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revoca-

tion of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where **the** applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any narcotic administrative regulation;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Arabians, quarter horses or appaloosas.

(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(5) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in **these activities** [~~such activity~~];

(6) Person less than sixteen (16) years of age;

(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(8) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(9) Employment or harboring of unlicensed persons required by these rules to be licensed;

(10) Discontinuance of or ineligibility for activity for which license was issued;

(11) Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device; or

**(c)** Other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(12) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drug; or substance which could be used to alter the speed of a horse in a race.

(13) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while [~~such~~] persons are in the discharge of their duties;

(14) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(15) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(16) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(17) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(18) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing; or association with persons so characterized; **or**

(19) Violation of any **administrative regulation** [~~rule~~] of the commission, or aiding or abetting any person in the violation of any **administrative regulation** [~~such rule~~].

Section **5.** [~~6.~~] License Applications for Associations. [~~Any~~] Persons or legal **entities** [~~entity~~] desiring to conduct Arabian, quarter horse or appaloosa racing in the Commonwealth **shall** [~~may~~] apply to the commission for association license. **The** [~~Such~~] application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. **The** [~~Such~~] application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require;

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with **a** [~~such~~] degree of ownership or type of interest shown;

**(3)** Names and addresses of [~~all~~] persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;

**(4)** [~~Any~~] Corporations, partnerships, or other legal **entities** [~~entity~~] which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with **a** [~~such~~] degree of ownership or type of interest [~~thereunto~~] pertaining **to such ownership or control**. [~~No~~] Applications shall **not** be acted upon by the commission until the commission is satisfied a full disclosure has been made;

**(5)** [~~(3)~~] Days and hours [~~thereof~~] on which racing is requested to be conducted;

**(6)** [~~(4)~~] Names of racing officials and persons responsible for track security and fire protection;

**(7)** [~~(5)~~] Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;

**(8)** [~~(6)~~] An operating report on forms prescribed by the commission if applicant is currently licensed;

**(9)** [~~(7) Such~~] Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct Arabian, quarter horse and appaloosa racing; **and**

**(10)(a)** [~~(8)~~] Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

| From | But Less Than | Daily Licensing Fee |
|---|---|---|
| $ 0 | $ 75,000 | $100 |
| 75,000 | 150,000 | 150 |
| 150,000 | 200,000 | 200 |
| over 200,000 | | 300 |

**(b)** In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid.

**(c)** As used in this section the term "daily mutuel" **shall mean** [ ~~is understood to be~~] the total gross amount of money bet or wagered by the track's patrons.

Section **6.** [~~7.~~] License Application for Participants in Racing. (1)**(a) A** [~~Any~~] person other than an association required to be licensed by Section 1 and desiring to participate in Arabian, quarter horse and appaloosa racing in the Commonwealth **shall** [~~may~~] apply to the commission for a license.

**(b) The** [~~Such~~] application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky

shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of **a** birth certificate or work permit showing applicant is sixteen (16) years or older.

(4)**(a)** **[**~~Fingerprint identification will be required of all licensed owners, trainers, and jockeys. All owners, trainers, and jockeys shall reimburse the commission for the full cost of fingerprinting and related investigative procedures.~~] [~~licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).~~]

**[**~~(5)~~**]** Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses.

**(b)** **[**~~No~~**]** Applications shall **not** be acted upon by the commission until the commission is satisfied a full disclosure has been made.

**(5)(a)** **[**~~(6)~~**]** Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

**(b)** An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

**(6)** **[**~~(7)~~**]** Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of **the** **[**~~such~~**]** applicant and under whose sponsorship and direction such applicant will work on association grounds.

**(7)** **[**~~(8)~~**]** Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendations to the commission by the licensing committee until **the** **[**~~such~~**]** applicant has **successfully completed** **[**~~been administered~~**]** a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of **the** **[**~~such~~**]** applicant for a farrier's license.

**(8)** **[**~~(9)~~**]** The following annual fees shall accompany the application and shall not be refundable:

(a) $35 [~~25~~] - Owner license [~~and annual color registration~~];

(b) $35 [~~25~~] - Trainer, jockey, or $45 - jockey's agent license;

(c) $35 [~~25~~] - Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) $5 - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) $25 - Stable area supplier license (suppliers of horse feed, tack, medication, or food vendors);

(f) $35 [~~10~~] - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, [~~commission veterinarian, commission chemist, commission supervisor of pari mutuel betting, commission director of security, commission license administrator, commission inspector,~~] association veterinarian, testing laboratory employee, horse identifier[~~, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider~~];

(g) $20 [~~10~~] - Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(h) $10 - Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; valet, jockey room custodian, clerk of the scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting;

[~~(i) $5 - Temporary occupational license for persons to be employed in occupations listed in paragraph (h) of this subsection for ten (10) days or less during a calendar year.~~]

Section **7.** **[**~~8.~~**]** Licensing Committee. (1) The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative.

(2) The **[**~~Such~~**]** licensing committee shall review all applications for all licenses, and forward all **the** **[**~~such~~**]** applications to the commission with recommendations **[**~~thereon~~**]**, subject to security checks, for final action.

**(3) The** **[**~~Such~~**]** licensing committee may issue to a license applicant a temporary permit to participate in the activity for which **a** **[**~~such~~**]** license application was made pending administrative processing and final action on **the** **[**~~such~~**]** license application by the commission.

Section **8.** **[**~~9.~~**]** Term of License. Licenses issued by the commission for participation in Arabian, quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on **the** **[**~~such~~**]** license at all race meetings conducted by associations in the Commonwealth during **[**~~such~~**]** calendar year, unless sooner suspended, revoked, or voided. [~~The commission may renew any license and any such renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor.~~] The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.

Section **9.** **[**~~10.~~**]** Possession of License Required. **[**~~No~~**]** Persons required to be licensed by these **administrative regulations shall not** **[**~~rules may~~**]** participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this administrative regulation shall include a color photograph of the licensee.

Section **10.** **[**~~11.~~**]** Applicability of Rules and Rulings to Household. **Administrative regulations** **[**~~Rules~~**]** pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 11. [12.] Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities, [under such conditions, so] notify the commission and respective interested persons or associations of **their** [such] intention at least fifteen (15) days before **their** [such] termination.

(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.

(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these **administrative regulations** [rules], the commission shall so advise all parties in interest and shall take appropriate action against offending parties.

(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these **administrative regulations** [rules], the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

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

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

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

RELATES TO: KRS 211.950 to 211.958
STATUTORY AUTHORITY: KRS 211.952
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for payment of salaries of trained emergency medical services personnel to maintain essential services in accordance with KRS 211.956 and to provide for ambulance and equipment funding for volunteer services pursuant to KRS 211.958.

Section 1. Definitions. [As used in this administrative regulation relating to emergency medical services, the following terms shall have the meaning set forth in this section unless the context requires otherwise:]

(1) "Ambulance service" means a service licensed by the cabinet to provide emergency health care ground transportation services which meets the requirements of 902 KAR 20:117, Sections 2 through 8, and which is operated by or under contract to the applicant.

(2) "Applicant" means a city, [or] county **or urban county** government.

(3) "Cabinet" means the Cabinet for Human Resources.

(4) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 211.954 and 211.956.

(5) "Emergency volunteer run" means an emergency response by an ambulance service to provide medical care as a result of an injury or medical emergency where the ambulance is staffed solely by volunteers.

(6) "General fund" means revenue derived by a city or county government, but excluding both fees for ambulance services and monies from the EMS matching fund which may be deposited into the city or county general fund.

(7) "Personnel costs" means salaries paid for ambulance service personnel including fringe benefits such as employer contributions for Social Security, medical insurance and retirement.

(8) "Volunteer" means a certified emergency medical technician (EMT), **paramedic, registered nurse, or physician** who does not receive a salary from the ambulance service or the applicant for making ambulance runs or performing as an EMT.

Section 2. [1.] Application for Personnel Funding Assistance. (1) In accordance with KRS 211.956, an applicant [Any city or county may apply to the Cabinet for Human Resources with the assistance of the applicable emergency medical services system] for funding assistance to maintain an adequate number of trained personnel to staff an [its] ambulance service operated:

(a) By the applicant; or

(b) Under contract to the applicant [in accordance with KRS 211.956].

(2) The application shall include:

(a) The total ambulance service operating budget;

(b) **Projected** [Estimated] receipts **from the currently approved** [, a summary] [of the total city or county] general fund budget **of the applicant**;

(c) [, and] Itemization of sources and amounts of city or county revenues appropriated for [utilized in] the provision of ambulance services; and

(d) Documentation of salaries and training levels of ambulance service personnel.

(3)(a) An applicant shall use the application form provided by [Application forms may be obtained from] the Cabinet for Human Resources.

(b) The applicant form "Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.958" (rev. 7/92), is incorporated by reference and may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. [2.] Funding Criteria and Allocation. [(1) In order to encourage cities and counties to financially support local ambulance services, EMS matching funds shall be awarded under KRS 211.956 to cities and counties in which more than five (5) percent of general funds as budgeted and reported to the Department of Local Government is allocated for ambulance service.

(2) The amount of EMS matching funds for which an applicant may be eligible shall not exceed $40,000 and shall be the lesser of:

(a) The amount of general funds allocated for ambulance service in excess of five (5) percent of total general funds; or

(b) Fifty (50) percent of ambulance service personnel costs.

(3)] If total eligibility for EMS matching funds exceeds the amount of EMS matching funds available, EMS matching funds shall be prorated by dividing total EMS matching funds by total eligible funds to obtain a percentage. That percentage, applied to the amount for which each applicant is eligible, shall determine the actual amount which shall be awarded to each applicant.

[Section 4. Equipment Funding for Volunteer Services. (1) As provided for in KRS 211.958, allocations from the matching fund program up to a maximum of $40,000 may be made to cities or counties to increase the amount of money available under KRS 211.954 for purchase of vehicles and equipment where:

(a) At least fifty (50) percent of emergency ambulance runs are emergency volunteer runs made by volunteers; and

(b) The applicant meets the funding criteria outlined in Sections 3(1) through (3) and 4 of this administrative regulation.

(2) Equipment purchased from this fund shall meet the same

~~definition, priorities, criteria, standards, and recordkeeping requirements for equipment purchased pursuant to 902 KAR 14:020.~~] [~~To qualify for funding assistance pursuant to KRS 211.956, the applicant city or county must budget a minimum of five (5) percent of its available general fund dollars as budgeted and reported to the Department for Local Government toward the cost of ambulance service operations, except that revenues raised by an ambulance service district tax may be applied to reduce the amount of general funds necessary on a one for one direct reduction basis.~~

~~(1) The maximum amount of matching funds for which the city or county may qualify shall be determined as follows:~~

~~(a) The first five (5) percent of city or county general funds budgeted and any other funds earmarked for ambulance service including the balance of ambulance service district tax revenues not applied to meet the five (5) percent general fund requirement, shall be deducted from the total ambulance service operating budget.~~

~~(b) The percentage of actual personnel costs to the total ambulance service budget shall be determined, and such percentage applied to the total ambulance service operating cost remaining after deductions in paragraph (a) of this subsection.~~

~~(c) The city or county shall be eligible for no more than fifty (50) percent of the amount derived from paragraphs (a) and (b) of this subsection up to a maximum of $40,000 per county, including grants to cities within counties.~~

~~(2) An eligible applicant shall receive a matching portion of available state funds prorated on the basis of total population served by all eligible applicants. Total per capita grants shall be not less than eighty (80) percent of the amount of General Fund appropriation budgeted for salary payment assistance.~~

~~(3) Up to ten (10) percent of the amount budgeted may be allocated by the cabinet to eligible applicants for special needs based on utilization rates, the number of emergency transports, or upon determination of a financial emergency of an eligible applicant that would drastically alter or eliminate essential services without special assistance from the state.~~

~~(4) Allocations from the personnel fund may be made to cities or counties for purchase of vehicles and equipment where at least fifty (50) percent of ambulance personnel are volunteers (noncompensated) or in which at least fifty (50) percent of the ambulance services are operated by volunteers on a twenty four (24) hour basis. Funding for equipment shall be consistent with the provisions of KRS 211.958.~~

~~Section 3. Matching Requirement. The matching requirement of fifty (50) percent for personnel salaries shall be budgeted from city or county general funds or from ambulance district tax revenues only.~~]

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 1, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

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

**902 KAR 14:020. Allocation of funding assistance for purchase of ambulances and [~~EMS~~] equipment for emergency medical services (EMS).**

RELATES TO: KRS 211.950 to 211.958
STATUTORY AUTHORITY: KRS 211.952
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance to city and county [~~local~~] governments for the purchase of ambulances and equipment to maintain essential EMS services in accordance with KRS 211.954.

Section 1. Definitions. [~~As used in this administrative regulation relating to emergency medical services, the following terms shall have the meaning set forth in this section unless the context requires otherwise:~~]

(1) "Ambulance" means a vehicle as defined in KRS 211.950(1).

(2) "Ambulance service" means a service licensed by the cabinet to provide emergency health care ground transportation services which meets the requirements of 902 KAR 20:117, Sections 2 through 8, and which is operated by or under contract to the applicant.

(3) "Applicant" means a city, [~~or~~] county, **or urban county** government.

(4) "Cabinet" means the Cabinet for Human Resources.

(5) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 211.954 and 211.956.

(6) "Equipment" means nonexpendable and nonconsumable items which have a per unit cost of $100 or more and which have an expected useful life of one (1) year or more.

(7) "Local funds" mean locally generated revenue excluding EMS matching funds awarded by the cabinet.

Section 2. [~~1.~~] Application for Funding Assistance. (1) An applicant [~~Any city or county~~] may apply to the cabinet [~~for Human Resources with the assistance of the applicable emergency medical services system~~] for funding assistance toward the purchase of an ambulance or [~~for~~] essential equipment to be used solely by an ambulance service operated by or under contract to the applicant pursuant to [~~in the operation of its respective ambulance service in accordance with~~] KRS 211.954.

(2) The application shall include:

(a) The total ambulance service operating budget;

(b) Itemization of sources and amounts of funds utilized in the provision of emergency medical services; and

(c) A justification for each ambulance or item of equipment for which funding assistance is requested.

(3)(a) An applicant shall use the application form provided by [~~Application forms may be obtained from~~] the cabinet.

(b) The applicant form "Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.958" (rev. 7/92), which has an effective date of July 15, 1992, is incorporated by reference and may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. Funding Criteria. [~~2. Ambulance Criteria; Equipment.~~] (1) Except as provided for in KRS 211.958, the maximum amount of EMS matching funds which a county, including cities within a county, may receive from the fund for equipment shall be $25,500 per year.

(2) To qualify for funds from the EMS matching funding program, an applicant shall:

(a) Match funding assistance from the EMS matching fund program with at least fifty (50) percent local funds;

(b) Provide assurances that ambulances and equipment purchased with assistance from this fund shall be used solely for the purposes contained in the application and approved by the cabinet;

(c) Submit to the cabinet documentation of actual expenditures from the EMS matching fund; and

(d) Agree to refund to the cabinet EMS matching funds which:

1. Remain unexpended one (1) year from the date of the award; or

2. Were not utilized for the approved purpose.

(3) [All] Ambulances purchased pursuant to this **administrative** regulation shall meet the requirements of 902 KAR 20:117, Section 5(3) related to emergency health care ground transportation services. [Federal Ambulance Design Criteria (GSA KKK-A-1822).]

[(4) [(2) Major items of] Equipment fundable under this administrative regulation shall be determined by the cabinet pursuant to KRS 211.954, Section 2(1) and may include such items as:

(a) Basic life support equipment required by 902 KAR 20:117, Section 7, which meets the definition of equipment in Section 1(6) of this administrative regulation;

(b) Advanced life support (ALS) equipment required by 902 KAR 20:117, Section 11, which meets the definition of equipment in Section 1(6) of this administrative regulation;

(c) Communication equipment including base stations, mobile radios and portable radios; and

(d) Extrication equipment.] [include, but need not be limited to:

(a) Any essential equipment required by 902 KAR 20:115;

(b) Mobile radio, UHF or VHF;

(c) Portable radio, UHF or VHF;

(d) Pagers for on-call personnel;

(e) Portable infant transport incubators;

(f) Portable monitor/defibrillator, complete;

(g) Antishock trousers;

(h) "Jaws of Life."]

Section 4. [3.] Title, Use, and Disposition of Ambulances and Equipment. (1) Legal title to ambulances and equipment purchased pursuant to this **administrative** regulation shall vest in the applicant [grantee].

(2) The applicant [grantee] shall:

(a) Maintain property records for each ambulance and item of equipment [having a value of $300 or more] purchased with EMS matching [for which] funds; [were provided by the Cabinet for Human Resources] and

(b) [shall] Notify the cabinet of any changes in its intended use or current status.

(3) [In the event] The applicant shall obtain prior approval from the cabinet [grantee desires] to dispose of an ambulance or item of equipment purchased with EMS matching fund assistance having a residual value of at least $300.

(4) The cabinet may require that proceeds from the sale of ambulances or equipment purchased with EMS matching fund assistance which have a residual value of at least $300 be prorated and returned to the cabinet in the same ratio as the original funding assistance. [, prior approval shall be obtained from the cabinet.

Section 4. Priorities for Allocation of Funds. Priorities for allocation of funds for ambulances and equipment shall be based on the following criteria:

(1) First priority - cities or counties which demonstrate need for replacement of essential equipment and/or ambulances which are totally inoperable, or at least seven (7) years old or driven in excess of 70,000 miles and in poor condition, to maintain essential ambulance services; and cities or counties in need of new equipment or ambulances to establish an essential ambulance service where none exists to cover the proposed service area.

(2) Second priority - cities or counties which document the need for additional equipment and/or ambulances to provide adequate coverage within the designated service area.

(3) Third priority - cities or counties in which a new ambulance service is being established to fulfill a documented need for additional service.]

**Section 5. Priorities for Allocation of Funds. Priorities for allocation of funds for ambulances and equipment shall be based on the following criteria:**

**(1) First priority - cities or counties which demonstrate need for replacement of essential equipment and/or ambulances which are totally inoperable, or at least seven (7) years old or driven in excess of 70,000 miles if it has a gasoline engine, or driven in excess of 100,000 miles if it has a diesel engine and in poor condition, to maintain essential ambulance services; and cities or counties in need of new equipment or ambulances to establish an essential ambulance service where none exists to cover the proposed service area.**

**(2) Second priority - cities or counties which document the need for additional equipment and/or ambulances to provide adequate coverage within the designated service area.**

**(3) Third priority - cities or counties in which a new ambulance service is being established to fulfill a documented need for additional service.**

**(4) Equipment funding shall be according to the following priorities:**

**(a) Essential equipment required by 902 KAR 20:117 which meets the definition of equipment in Section 1(6) of this administrative regulation;**

**(b) Communication equipment such as mobile radios and portable radios and base stations, but only that portion of the base station's use that is attributable to EMS. The applicant shall provide a notarized statement verifying the percentage of time that the base station is used for EMS.**

**(c) Medical antishock trousers; and**

**(d) Heavy extrication equipment.**

**(5) Funding for Type I and Type III ambulances shall not exceed fifty (50) percent of the total cost up to a maximum of $20,000. Funding for Type II ambulances shall not exceed fifty (50) percent of the total cost up to a maximum of $15,000. Funding for remounts shall be allowed only when the work is done by an ambulance manufacturer division and shall not exceed fifty (50) percent of the actual cost up to a maximum of $20,000.**

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: December 1, 1992
FILED WITH LRC: December 15, 1992 at 11 a.m.

## CABINET FOR HUMAN RESOURCES
### Department for Medicaid Services
### (As Amended)

**907 KAR 1:450. Nurse aide training criteria and registry.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396r
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. [The following definitions shall be applicable to this administrative regulation unless the specific context dictates otherwise:]

(1) "Competency evaluation program" means the competency evaluation program required by 42 USC 1396r [Title XIX of the Social Security Act] for nurse aides employed by Medicaid [Title XIX]

participating nursing facilities prior to October [July] 1, 1989, when the program is approved by the state in which the nursing facility is located.

(2) "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, registered dietician, or licensed or certified social worker.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by 42 USC 1396r [Title XIX of the Social Security Act] to be in place for Medicaid [Title XIX] participating nursing facilities [(skilled nursing or intermediate care)], when the program is approved by the state in which the nursing facility is located.

(5) "State approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "[Kentucky Department for Medicaid Services] Nurse Aide Training Manual [and Competency Evaluation Program]" revised November 1, 1992 [(dated July 1989)] which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

**(6) "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.**

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 nurse aide training program shall, at a minimum, consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.** [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

## REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

### DEPARTMENT OF MILITARY AFFAIRS
### Division of Disaster and Emergency Services
### (Amended After Hearing)

**106 KAR 1:075. Local disaster and emergency services organizational standards.**

RELATES TO: KRS 39.483
STATUTORY AUTHORITY: KRS 39.483
NECESSITY AND FUNCTION: KRS 39.483 requires the Division of Disaster and Emergency Services to establish standards for local disaster and emergency services organizations established pursuant to KRS 39.415.

Section 1. In addition to requirements outlined in KRS 39.483, the following requirements shall be met by a local disaster and emergency services organization to retain funding eligibility:

(1) A functional or full scale exercise to test the operations plan shall be conducted and fully documented annually.

(2) A local director, serving in a paid or nonpaid capacity, shall complete the following home study courses:

(a) "Emergency Program Manager: An Orientation to the Position" within four (4) months after appointment.

(b) "Emergency Preparedness USA" within eight (8) months after appointment.

(c) "Hazardous Materials: A Citizen's Orientation" within one (1) year after appointment.

(3) A director serving in a nonpaid capacity whose organization receives funding, shall complete the course "Introduction to Emergency Management", within eighteen (18) months of his appointment date.

(4) A local director whose salary is reimbursed for emergency management services shall complete the following courses **except as provided in subsection (5) of this section**. The director shall complete at least one (1) annually.

(a) Introduction to Emergency Management.
(b) Emergency Planning.
(c) Hazardous Material First Responder Awareness Training.
(d) Exercise Design.
(e) Civil Defense: An All Hazards Approach.
(f) Basic Skills in Decision-making and Problem-solving.
(g) Basic Skills in Leadership and Influence.
(h) Basic Skills in Effective Communications.
(i) Basic Skills in Creative Financing.
(j) The Unified Incident Command System Course endorsed by this division.

(5) **The courses "Emergency Planning" and "Exercise Design" listed in subsection (4) of this section may be completed for credit by any member of the local disaster and emergency services organization upon approval of the executive director.**

(6) Each local disaster and emergency services employee, other than the director, whose salary is reimbursed shall complete the home study courses specified in subsection (2) of this section and the course "Introduction to Emergency Management" within eighteen (18) months of their employment date. Thereafter each **[~~such~~]** employee shall complete one (1) of the courses specified in subsection (4) of this section every two (2) years.

(7) **[~~(6)~~]** A local director and other paid Disaster and Emergency Services employees shall be given credit under this **administrative** regulation for any course specified herein successfully completed since January 1, 1984.

(8) **[~~(7)~~]** Credit for completion of equivalent courses may be granted by the executive director.

Section 2. Reimbursement for attending required courses and workshops shall comply with Finance and Administration Cabinet policies. If availability of funds is limited, reimbursement shall be made for mandatory training first.

Section 3. In addition to the persons listed in KRS 39.483(8), the following persons may have expenses reimbursed for attendance at the Emergency Management Workshop, if funds are available. Reimbursement is limited to three (3) persons from the same county.

(1) Chief or assistant chief of a rescue squad that is affiliated with a local disaster and emergency services organization.
(2) Chief or assistant chief of a fire department.
(3) Chief or assistant chief of a police department.
(4) Director of a local ambulance service.
(5) Director of public works.
(6) Director of emergency medical services.
(7) County disaster and emergency services operations officer.
(8) County disaster and emergency services communications officer.
(9) County disaster and emergency services public information officer.
(10) Chairman or vice-chairman of a local emergency planning committee.

Section 4. The Division of Disaster and Emergency Services shall publicize all available state and federal emergency management courses to all local mayors, county judge/executives, and disaster and emergency services directors by:

(1) Mailing all pertinent information regarding training to them at least forty-five (45) days in advance of classes.
(2) Mailing an annual catalog at the beginning of each DES fiscal year.

Section 5. 106 KAR 1:070 is hereby repealed.

JAMES M. EVERETT, Executive Director
ROBERT L. DEZARN, Major General
APPROVED BY AGENCY: January 29, 1993
FILED WITH LRC: February 4, 1993 at 2 p.m.

### KENTUCKY REAL ESTATE COMMISSION
### (Amended After Hearing)

**201 KAR 11:350. Seller's disclosure of conditions form.**

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS 324.360
NECESSITY AND FUNCTION: KRS 324.360 requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and sets forth matters which the form shall contain and allows the inclusion of additional matters. The following form shall be completed and signed as provided in KRS 324.360, by sellers of residential real estate when licensed agents are involved. **[~~If the seller refuses to complete and sign this form, this refusal shall be communicated by the licensed agents in writing to all prospective buyers. The completed and signed form shall be given by the agents to all prospective buyers.~~]**

Section 1. The form shall be as follows:

"SELLER DISCLOSURE OF PROPERTY CONDITION

**This form applies to sales and purchases of residential real estate.**

**This form is not required for:**

**1. Residential purchases of new homes if a written warranty is offered;**

**2. Sales of real estate at auction; or**

**3. A court supervised foreclosure.**

PROPERTY ADDRESS: _____

PURPOSE OF STATEMENT: Completion of this form **shall** **[~~will~~]** satisfy the requirements of Chapter 324 of the Kentucky Revised Statutes which mandates the seller's disclosure of the condition of and information about the property he **[~~or she~~]** is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement **shall not be** **[~~is not~~]** a warranty of any kind by the seller or seller's agent and **shall not be** **[~~is not~~]** intended as a substitute for any inspection or warranty the purchaser may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages with your signature if necessary. (4) Complete this form yourself. (5) If some items do not apply to your property, write "not applicable". (6) If you do not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property and that this information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to any person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are representations made by seller and are not the representations of the agent. The agent has no independent knowledge of the condition of the property except that which is set out on this form.

PROPERTY CONDITIONS, IMPROVEMENTS AND ADDITIONAL INFORMATION:

1. Has the basement ever leaked? __Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired or treated? ___Yes ___No ___Unknown
2. Has the roof ever leaked? ___Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired? ___Yes ___No ___Unknown
   Approximate age of the roof: _____Years ___Unknown
3. What is the source of the water supply? _____
   Has the water been tested? ___Yes ___No ___Unknown
   If yes, will you provide a copy of the test results? ___Yes ___No
4. Have you ever found the water supply to be inadequate? ___Yes ___No If yes, explain:_____
5. What is the source of the property's sewage service? ___Municipal or other sewer system ___Septic tank/septic system ___Other
6. Has your sewer service ever been interrupted? ___Yes ___No ___Unknown
7. Has your sewage system been repaired or treated? ___Yes ___No If yes, approximate date of repair: _____
8. Plumbing system: Are you aware of any leaks in your plumbing system? ___Yes ___No ___Unknown If yes, describe the location and problem: _____
9. Electrical System: Is the electrical system more than twenty years old? ___Yes ___No ___Unknown
10. Have you found it necessary to have any portion of your electrical system repaired by an electrician or other professional? ___Yes ___No ___Unknown
11. Heating System: Type/approximate age_____
12. Cooling System: Type/approximate age_____
13. Have you had your heating or cooling system repaired or had maintenance work performed on your heating or cooling system? ___Yes ___No ___Unknown If yes, the approximate date of the repair or maintenance:

The seller has owned the property since _____ (date) and makes these representations only since that date and only prior to the date this form is completed. If any changes occur in the structure or mechanical or component system of this property from the date of this form to the date of closing, seller will immediately disclose the changed circumstances to the buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or the broker's agent.

Seller _____ Date Seller _____ Date

Buyer _____ Date Buyer _____ Date

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES HIS UNDERSTANDING THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller: _____

Date: _____

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent: _____

Date: _____

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer _____ Date Buyer _____ Date

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER."

JAMES H. HUFF, Chairman
APPROVED BY AGENCY: January 27, 1993
FILED WITH LRC: January 28, 1993 at 10 a.m.

## CABINET FOR HUMAN RESOURCES
### Department for Social Services
### (Amended After Hearing)

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

RELATES TO: KRS 17.165, **199.894 to 199.898** **[~~199.892 to 199.896, Acts 1992, c. 57, p.412-419~~]**

STATUTORY AUTHORITY: KRS 194.050, **199.986(2)** **[~~199.892, Acts 1992, c. 57, p. 412-419~~]**

NECESSITY AND FUNCTION: KRS **199.896(2)** **[~~199.892~~]** grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to define terms used for child day care facilities.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.

(2) "Caregiver" means child day care staff, including volunteers,

who work in a child day care facility.

(3) "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(4) "Day care" means care of a child in a facility which provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Director or provider" means the person responsible for the day-to-day operation of a facility or program for the care of children.

(6) "Facility" means:

**(a) A Type I day care facility which is a facility:**

**1. Other than a dwelling unit which regularly receives four (4) or more children; or**

**2. Including a dwelling unit, which regularly provides day care for thirteen (13) or more children.**

**(b) A Type II child day care facility which:**

**1. Is a home or dwelling unit that is the full-time residence of the licensee; and**

**2. Regularly provides care apart from parents for seven (7), but not more than twelve (12) children.**

~~[(a) A dwelling unit which is the full-time residence of the licensee which regularly provides child day care apart from the parent for seven (7) or more children who are not related to the caregiver.~~

~~(b) A location other than a dwelling unit which regularly receives four (4) or more children for child day care who are not related to the caregiver.]~~

(c) The following child day care settings including ~~[but not limited to]~~:

1. Day care;
2. Preschool;
3. Nursery;
4. Child care provided by employers for employees;
5. Kindergartens not accredited by the Kentucky Department of Education pursuant to 704 KAR 5:050;
6. Child care in recreational programs;
7. Montessori;
8. Head Start; and
9. Before or after school child care.

(d) The following child care settings shall not be included:

1. Summer camps certified by the Kentucky Department for Health Services as "Youth Camps" and providing care for school-age children;

2. Programs operated under Kentucky Department of Education preschool **administrative** regulations;

3. Grades one (1) through twelve (12) in private schools;

4. Summer programs operated by religious organizations in which a child attends no longer than two (2) weeks;

5. Child care programs operated by the armed services;

6. Child care provided while parents are on the premises other than the employment and educational site of parents;

7. Child care provided by educational programs which includes parental involvement with the care of the child including development of parenting skills;

8. Facilities operated by a religious organization while religious services are being conducted; and

9. Respite care to provide relief for the primary caregiver of a child for a specific period of time.

(7) "Infant " means a child under one (1) year of age.

(8) "Nighttime care facility" means a facility in which children are received for regular, full, or part-time care during the night. The hours of a facility providing nighttime care shall conform to the hours established by the State Fire Marshal for care given after 6 p.m.

(9) "Premises" means the building and surrounding grounds in which day care is provided and licensed.

(10) "Qualified substitute" means a person who meets the requirements of a caregiver.

(11) "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(12) "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(13) "Secretary" means the Secretary for the Cabinet for Human Resources.

(14) "School-age child" means a child attending kindergarten, elementary or secondary education.

(15) "Tactile activities" means activities of or relating to the sense of touch.

(16) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(17) "Twelve (12) clock hours of annual training" means a Cabinet for Human Resources approved program of child development training that is completed by employees and owners who directly care for children as governed by Acts 1992, c. 57.

(18) "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved program that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by Acts 1992, c. 57 and the remaining six (6) hours shall be completed within the first year.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

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

RELATES TO: KRS **199.894 to 199.898** ~~[199.892 to 199.896, Acts 1992, c. 57, p.412-419]~~

STATUTORY AUTHORITY: KRS 194.050, **199.896(2)** ~~[199.892, Acts 1992, c. 57, p.412-419]~~

NECESSITY AND FUNCTION: 905 KAR 2:010, Standards for all child day care facilities, is no longer required because 905 KAR 2:001, Definitions for Title 905 Chapter 2, 905 KAR 2:090, Child care facility licensure, 905 KAR 2:110, Child care provider requirements, 905 KAR 2:120, Child care facility health and safety standards, and 905 KAR 2:130, Child care discipline contain the substance and content of 905 KAR 2:010.

Section 1. 905 KAR 2:010, Standards for all child day care facilities, is hereby repealed.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

**905 KAR 2:090. Child care facility licensure.**

RELATES TO: KRS 17.165, **199.894 to 199.898** ~~[199.892 to 199.896, Acts 1992, c. 57, p.412-419]~~

STATUTORY AUTHORITY: KRS 194.050, **199.896(2)** ~~[199.892, Acts 1992, c. 57, p.412-419.]~~

NECESSITY AND FUNCTION: KRS **199.896(2)** ~~[199.892]~~ grants authority to the Cabinet for Human Resources to establish administra-

tive regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Inspections. Representatives of the cabinet shall at all times have the authority to make unannounced inspections of facilities:

(1) Premises;

(2) Records required by 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 through 905 KAR 2:130; and

(3) Programs.

Section 2. License Issuance. (1) A license shall be issued for:

(a) A specified physical location;

(b) Operation by a designated sponsor or owner;

(c) Age categories; and

(d) A specified maximum number of children to be on premises at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:

1. Available space as determined by the State Fire Marshall's office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff.

(2) The license shall list the services **to be** provided by the facility. (3) To qualify for a license, a child day care facility shall:

(a) Comply with local zoning requirements;

(b) Be approved by the office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Have liability insurance in the amount of $100,000 per child per occurrence; and

(f) Comply with provisions of this administrative regulation and 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

**(4)(a) The facility shall be in compliance with subsection (3) of this section or shall have submitted an acceptable plan of correction.**

**1. Compliance shall be ascertained through on-site inspections of the facility.**

**2. Regulatory violations identified during these inspections shall be transmitted in writing to the facility.**

**(b) The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected.**

**(c) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.**

**1. If the plan is unacceptable, the reasons shall be specified.**

**2. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days.**

**[**~~(4) The facility shall be in compliance with subparagraph (3) of this section or shall have submitted an acceptable plan of correction. Compliance shall be ascertained through on-site inspections of the facility. Regulatory violations identified during these inspections shall be transmitted in writing to the facility. The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan. If the plan is unacceptable, the reasons shall be specified. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days.~~**]**

(5) License shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.

(6) License shall not be transferable. A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.

(7) The license shall be posted in a conspicuous place.

(8) A facility shall not begin operation without a license to operate from the Cabinet for Human Resources.

(9) A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Eighty (80) dollars for initial licensure for a **Type I** facility **[**~~caring for thirteen (13) or more children~~**]**;

(b) Forty (40) dollars for initial licensure of a **Type II** facility **[**~~caring for less than thirteen (13) children~~**]**; or

(c) Forty (40) dollars for renewal licensure.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the **initial and renewal** licensure application. Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Human Resources or the State Fire Marshall's office.

Section 4. Licenses **[**~~Shall be Renewed Annually~~**]**. (1) **Licenses shall be renewed annually. [**~~A renewal application and fee shall be submitted prior to the expiration date of the current license.~~**]**

(2) The facility shall comply with the requirements of Section 2(3)(c)-(f) and (4) of this administrative regulation.

Section 5. Basis for Revocation or Denial. (1) The Secretary of the Cabinet for Human Resources may deny or revoke a license for failure to meet the standards of this administrative regulation.

(2) If a license is revoked, the applicant or licensee shall not reapply for at least one (1) year from the designated date of closure established by the cabinet **[**~~hearing officer~~**]**.

Section 6. Right of Appeal. (1) If a license has been denied or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.

(2) Upon receipt of the request for a hearing:

**(a)** The secretary or his representative shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.

**(b)** The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

**(c)** The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. If license denial or revocation is upheld, the **cabinet [**~~secretary~~**]** shall specify the date by which the facility shall close and the licensee shall be notified in writing.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

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

RELATES TO: KRS 17.165, **199.894 to 199.898** [~~199.892 to 199.896, Acts 1992, c. 57, p.412-419~~]
STATUTORY AUTHORITY: KRS 194.050, **199.896(2)** [~~199.892, Acts 1992, c. 57, p.412-419~~]
NECESSITY AND FUNCTION: KRS **199.896(2)** [~~199.892~~] grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the facility in accordance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(2) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall be available for their use.

(3) Information concerning children, their parents, relatives, or guardians shall be kept in strict confidence by the staff, except as otherwise required by law.

(4) Volunteers shall comply with the policies and procedures of the facility.

(5) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other procedures pertaining to the operation of the facility.

(6) Activities of persons living in a facility that is the dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by persons in the facility.

(a) Caregivers shall wash hands with soap and warm running water after diapering or toileting each child.

(b) Caregivers shall wash hands with soap and running water immediately before feeding children.

(8) The services to be provided within the facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to parents.

(9) Parents or persons exercising custodial control of a child shall be permitted to visit the facility at any time during regular hours of operation.

(10) The director or provider shall be responsible for the following:

(a) Development of a child care program which meets the requirements of this administrative regulation and 905 KAR 2:090, 905 KAR 2:120 and 905 KAR 2:130;

(b) Development of facility plans, policies and procedures;

(c) Supervision of personnel and their conduct, carrying out of personnel policies, scheduling daily activities, and management of staff meetings;

(d) Evaluation of the instructional activities of staff;

(e) Assurance that additional staff is available during cooking or cleaning hours if necessary to maintain regulated supervision of the children; and

(f) Provision for health, safety and comfort of children.

Section 2. Records. (1) The following records shall be maintained at the facility:

(a) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician;

(b) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the facility director at enrollment;

(c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized in accordance with 902 KAR 2:060 shall be on file within thirty (30) days of admission;

(d) Permission forms for trips off the premises signed by the parent or guardian;

(e) Daily attendance records of children;

(f) For each employee, a copy of the results of a negative tuberculin skin test or chest X-ray prior to employment and every two (2) years thereafter;

(g) A written schedule of staff working hours;

(h) A written record of staff training;

(i) A written plan for staff development;

(j) A written record of quarterly fire, earthquake and tornado drills;

(k) A written plan or diagram outlining the course of action in the event of natural or man-made disaster posted in a prominent place;

(l) Each facility shall obtain a criminal records check directly from the Justice Cabinet prior to initial employment of staff with supervisory or disciplinary authority over a minor, including cooks, bus drivers, substitutes and volunteers. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, he shall not be considered a volunteer for the purpose of criminal records check;

(m) A written record of reports to the cabinet required in Section 4(1) of this administrative regulation; and

(n) The facility shall post the following for public inspection in the director's office or lobby:

1. **A copy of the statement of deficiencies reports the facility has received from the cabinet and the plans of correction for the calendar year and permit interested parties to inspect facility files relating to deficiency statements and plans of correction;** [~~A copy of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three (3) years, including the most recent;~~]

2. A description of the services currently provided by the facility;

3. A listing of the rates currently charged for services provided by the facility;

4. A listing together with the charges for the services and items not included in the basic rate for which parents may be charged separately;

5. A copy of each court order pertaining to the quality of care or services provided in the facility; and

6. **A copy of children and parental rights pursuant to KRS 199.898.** [~~A copy of children and parent rights pursuant to Acts 1992, c. 57.~~]

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 3. Staff Requirements. (1) A director of a facility providing child care shall:

(a) Be 21 years of age;

(b) Have a high school diploma or a General Equivalency Diploma (GED);

(c) [~~Not be employed elsewhere during the operating hours of the facility between 6 a.m. to 6 p.m.; and~~

~~(d)~~] Meet one (1) of the following requirements:

1. Master's degree in Early Childhood Education and Development;

2. Bachelor's degree in Early Childhood Education and Development;

3. Master's degree or a Bachelor's degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training;

4. Associate degree in Early Childhood Education and Development;

5. Associate degree in a field other than Early Childhood

Education and Development, plus two (2) years of verifiable full-time paid experience working in a licensed day care facility **or certified family child care home**, plus twelve (12) clock hours of child development training;

6. Child Development Associate (CDA);

7. Certificate or diploma in Child Care Services from a Vocational School (Dictionary of occupational title: teacher, pre-school; director, preschool), plus two (2) years of verifiable full-time paid experience working in a licensed day care facility **or certified family child care home**, plus twelve (12) clock hours of orientation and child development training; or

8. **Three (3) years of verifiable full-time paid experience working in a licensed day care facility or certified family child care home, plus twelve (12) clock hours of orientation and child development training.** [~~Five (5) years of verifiable full-time paid experience working in a licensed day care facility, plus twelve (12) clock hours of orientation and child development training.~~]

(2) A director of a licensed facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under Section 3(1) of this administrative regulation.

(3) The following staff requirements shall apply to a facility:

(a) A facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child;

(b) A staff person shall be on duty who is annually certified in cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet. This training shall be in addition to the twelve (12) clock hours requirement in subsections (1) and (2) of this section if the staff person is the director;

(c) One (1) adult shall be designated as being in charge. If the director is not present in the facility, the adult left in charge shall carry out the duties of the director;

(d) A minimum of two (2) qualified substitutes shall be available in case of need;

(e) The minimum of adult workers in a facility shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are under direct supervision. A person under the age of sixteen (16) shall not be counted as staff for the staff to child ratio;

(f) Controlled substance or alcohol use shall not be permitted on the premises during hours of operation;

(g) Smoking shall be permitted only in designated areas away from the children;

(h) Staff members shall remain awake while on duty **except as specified in 905 KAR 2:120, Section 1(5)(f)**; and

(i) Require for a facility that is the full-time residence of the licensee that adults living in the home submit:

1. Criminal records check; and
2. Tuberculosis skin test.

(4) Twelve (12) clock hours of orientation and child development training during the first year and twelve (12) clock hours of annual training thereafter shall be required and shall be documented in writing by the trainer.

Section 4. Reports Made to the Cabinet for Human Resources. (1) The following shall be reported within twenty-four (24) hours:

(a) Communicable disease to the local health department in accordance with KRS 214.010;

(b) An accident or injury requiring extensive medical care, hospitalization, or death;

(c) An incident that results in legal action by or against the facility which affects a child or personnel; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse, neglect or dependency shall be reported as specified in KRS Chapter 620.

(3) A change of director shall be reported within one (1) week.

(4) Notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership or sponsorship;
(b) Change of location;
(c) Increase in capacity;
(d) Hours of operation; and
(e) Change of services in the following categories:
1. Infant;
2. Toddler;
3. Two (2) years to school-age;
4. School-age;
5. Nighttime care; and
6. Transportation.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

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

RELATES TO: KRS 17.165, **199.894 to 199.898** [~~199.892 to 199.896, Acts 1992, c. 57, p.412-419~~]

STATUTORY AUTHORITY: KRS 194.050, **199.896(2)** [~~199.892, Acts 1992, c. 57, p.412-419~~]

NECESSITY AND FUNCTION: KRS **199.896(2)** [~~199.892~~] grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-child ratios and group size for an operating facility shall be maintained as follows:

| Age of Children | Ratio | Maximum Group Size |
|---|---|---|
| Birth - 1 year | 1 staff for 6 children | 12 |
| | (1 staff for 5 children | 10)* |
| 1 to 2 years | 1 staff for 6 children | 12 |
| 2 to 3 years | 1 staff for 10 children | 20 |
| 3 to 4 years | 1 staff for 12 children | **24** [~~20~~] |
| 4 to 5 years | 1 staff for 14 children | **28** [~~24~~] |
| 5 to 7 years | 1 staff for 15 children | **30** [~~25~~] |
| 7 and older | 1 staff for 25 children (for before and after school) | **30** [~~25~~] |
| | 1 staff for 20 children (for full day of care) | **30** [~~20~~] |

* This provision shall become effective July 1, 1993

(a) **In a Type I facility** a group shall be separately maintained in a defined area unique to the group with specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the staff-child ratio and maximum group size. One (1) adult alone shall not provide care for more than ten (10) preschool children, or for more than fifteen (15) school age children.

**(c) If the director's own preschool children or preschool children of day care staff receive care in the facility, they shall be included in the staff child ratio.**

(2) Each facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while the children are under the supervision of employees of the facility. The program shall include procedures to inform facility

employees of the laws of the Commonwealth pertaining to child abuse or neglect as specified under KRS Chapter 620.

(3) The facility shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:

(a) A variety of creative activities which may include the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building; and
7. Tactile activities.

(b) Indoor or outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play apart from the group at times, if the child desires.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children stand or sit.

(j) Television viewing by children shall be limited to program related areas.

(4) If school-age care is provided:

(a) A separate area or room shall be provided in a **Type I** facility.

(b) A child shall be provided a snack after school.

(c) Separate toilet facilities shall be provided for males and females, or a plan implemented to use the same facilities at separate times.

(5) If nighttime care is provided:

(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day. If school-age children are served, time spent in school shall be included in the sixteen (16) hours limit.

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room.

(c) If children are present for extended periods of time during their waking hours, the facility shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns.

(e) School children shall be offered breakfast if they go to school from the facility.

**(f) Staff shall:**

**1. In Type I facilities remain awake while on duty.**

**2. In Type II facilities remain awake until every child in care is asleep.**

Section 2. Health needs of the child shall be met as follows:

(1) First aid supplies shall be available to provide prompt and proper first aid treatment and stored out of reach of children. Supplies shall be periodically inventoried to ensure that they are current. Reusable items shall be sanitized and maintained in a sanitary manner. First aid supplies shall include:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Tweezers;
(g) Thermometers;
(h) Flashlight;
(i) Cold pack;
(j) First aid book;
(k) Disposable latex gloves; and
(l) Ipecac syrup (to be given under direction of a licensed physician or the poison control center).

(2) A child showing signs of an illness that may be communicable to others in a day care setting shall not be admitted to the regular child care program. If a child becomes ill during the day, he shall be placed in a supervised area isolated from the rest of the children, the parent or designated person shall be contacted immediately and arrangements shall be made to remove the child from the facility.

(3) Prescription medications shall not be given to a child except as authorized by a licensed physician and with written daily request of the parent or guardian.

(a) The facility shall keep a written record of the administration of each medication, including time, date, amount and staff giving the medication.

(b) Medication shall be stored in a separate (locked) place out of the reach of children and shall be in the original bottle and properly labeled.

(c) Medication shall not be given to a child if the expiration date on the bottle has passed.

(4) Nonprescription medication shall be given to a child only with written daily request of parent or guardian.

(5) Each child shall be helped with personal care and cleanliness.

(6) Children shall not return from the toilet to activities without first washing hands. A child shall wash his hands with soap and warm, running water prior to eating and after toileting.

(7) **Staff shall insure that** diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(8) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available.

(9) Soiled diapers or wet clothing shall be changed promptly and stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(10) When a child is diapered, the child shall be placed on a clean washable surface or disposable covering. Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician. If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered. After diapering, staff shall wash their hands and disinfect the surface before diapering another child.

(11) If training chairs are used, they shall be emptied promptly and sanitized after each use.

(12) The infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that participates in the child care food program, or provides formula as a fringe benefit to the parent.

(13) Bottles shall be individually labeled and promptly refrigerated.

(14) **A child shall not be placed in bed with a propped bottle.** **[**~~Children shall not be placed in bed with a bottle.~~**]**

(15) A child shall have rest periods not to exceed two (2) hours except for infants and toddlers, and time periods during nighttime care and extended hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period.

(16) Drinking water shall be freely available to a child and an individual drinking cup provided if no fountain is provided.

(17) Toilet articles like combs, brushes and toothbrushes used by

a child shall be individual and plainly marked.

(18) The facility shall provide and serve nutritious snacks and meals.

(a) A child present at meal or snack times shall be served.

(b) The facility shall provide and serve breakfast or a midmorning snack, lunch, and a midafternoon snack and dinner, if appropriate.

(c) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between meals or snacks.

(d) Food prepared shall be in quantities reflecting the developmental stage of the child.

(e) Food requirements **shall be as follows:** ~~[include but shall not be limited to the following:]~~

1. Breakfast shall include milk, bread, and fruit or vegetable or juice;

2. Snacks shall include two (2) of the following: milk, protein, fruit or vegetable or juice, or bread; and

3. Lunch and dinner shall include milk, protein, two (2) vegetables or a fruit and one (1) vegetable, and bread.

(f) If parents choose to provide food for their own child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed, the facility shall provide additional food necessary to meet these requirements.

(g) A child shall be seated at eating time with sufficient room to manage food and tableware. Adults shall be present with children during eating times.

(h) Individual eating utensils shall be of size and design that a child can handle easily.

(i) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. If the facility does not have a current food service permit issued under the authority of the Department for Health Services, as governed by 902 KAR 45:005, Food Service Code, it shall be in compliance with the requirements of this section.

(1) A facility that serves a meal shall have a three (3) compartment sink or other equipment, and procedures approved by the cabinet, for the purpose of washing and sanitizing dishes, silverware, eating and cooking utensils after use.

(2) Food supplies and protection are to be maintained as follows:

(a) Food shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. Hermetically sealed, nonacidic and low-acidic food which has been processed in a place other than a commercial food-processing establishment shall not be used. Food served shall be from a source which is in compliance with applicable state and local laws and administrative regulations. Established commercial food stores are an acceptable source.

(b) Food, while being stored, prepared, displayed or served shall be protected against contamination from dust, flies, rodents and other vermin, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage.

(c) Potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation. The temperature for potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service.

(d) Frozen food shall be kept at a temperature of zero degrees Fahrenheit or below so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, quick thawed as part of the cooking process, or by another method satisfactory to the health authority.

(e) Each cold-storage facility used for storage of perishable food in a nonfrozen state shall have an indicating thermometer or other appropriate temperature measuring device.

(f) Convenient and suitable sanitized utensils shall be provided and used to minimize handling of food where food is prepared.

(g) Poultry, pork and their products which have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

(h) Meat salads, poultry salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

(i) Food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent containers may be stored on the floor if it is maintained in an acceptable sanitary condition.

(j) Individual portions of food served to a child shall not be served again. Wrapped food, which is still wholesome and has not been unwrapped, may be reserved.

(k) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(3) Health and disease controls shall be in place as follows: (a) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.

(b) An employee shall maintain personal cleanliness and conform to hygienic practices while on duty. Hands shall be washed thoroughly before starting work, and as often as may be necessary to remove soil and contamination. An employee shall not resume work after visiting the toilet room without first washing his hands.

(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.

(d) Food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, be accessible for cleaning, and nontoxic.

(e) Eating and drinking utensils shall be cleaned for each usage. Kitchenware, food contact surfaces of equipment, exclusive of cooking surfaces of equipment, and food storage utensils used in preparation or serving of food or drink shall be cleaned after each use. Cooking surfaces of equipment shall be kept clean. Nonfood contact surfaces of equipment shall be cleaned to keep them in a clean and sanitary condition. Single-service articles shall be stored, handled, and dispensed in a sanitary manner, and be used only once.

(f) Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

(g) Openings to the outer air shall be effectively protected against the entrance of the insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(h) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.

(i) Kitchens shall be adequately ventilated to the outside air.

(j) The water supply shall be properly located, protected, adequate, and of a source approved by the local health department. Groundwater supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

(k) Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws as governed by KRS 211.350 to 211.380. Sewage shall be disposed of by a method approved by the Cabinet for Natural Resources and Environmental Protection or the Cabinet for Human Resources. Consultation shall be sought from the Cabinet

for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction over a facility in which the adequacy of the plumbing is questioned.

(l) Each facility shall be provided with adequate and conveniently located toilet and handwashing accommodations.

1. Each toilet shall be kept in clean condition, kept in good repair, be lighted and have ventilation to outside air.

2. A supply of toilet paper shall be available.

3. Lavatories shall have hot and cold running water under pressure which allows washing of hands under warm water.

4. Water temperature at lavatories used for hand washing shall not exceed 110 degrees Fahrenheit.

5. Soap and approved individual cloth or paper towels shall be provided.

6. Easily cleanable, covered waste receptacles shall be available in toilet and handwashing areas.

Section 4. Transportation. (1) There shall be documentation available to indicate conformance to federal and state laws pertaining to vehicles, drivers and insurance as governed by KRS 281.600, 138.655 and 186.020.

(2) A facility providing or arranging transportation service shall have a written plan and statement of transportation policies and procedures.

(3) Transportation provided by licensed public transportation or school bus shall meet Transportation Cabinet safety inspection requirements.

(4) Requirements for facility owned vehicles and their usage:

(a) Twelve (12) or more passenger vans and buses shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle used to transport children, and requiring traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying colors and words.

(c) A car or van shall be equipped with seat belts for each child to be individually secured.

(d) A vehicle used to transport children shall not carry hazardous materials aboard.

(5) The staff-child ratios set forth in Section 6(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of **five (5)** **[**~~six (6)~~**]** a driver shall supervise alone is four (4).

(6) Each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat.

(7) A vehicle containing children shall not be left unattended.

(8) A child shall not be left unattended at the site of after-care delivery.

(a) If the parent, or a person designated by the parent to accept the child, is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.

(b) If a person other than the designated person is to receive the child, arrangements shall be made by the parent or guardian and documented.

(c) A child shall not be picked up at or delivered to a location which requires crossing the street or highway unless accompanied by an adult.

(9) A vehicle transporting children shall have the headlamps on.

(10) A vehicle shall be refueled when not being used to transport children. If emergency refueling or repair is necessary during transporting, children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(11) The engine shall be turned off, keys removed, and brake set if the driver is not in the driver's seat.

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.

(a) There shall be a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, hallways, and storage areas. It shall be kept clean and in good repair.

(b) If a portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted; that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boys' bathrooms urinals may be substituted for up to one-half (1/2) of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food. The kitchen shall not be used for activities of the children.

(f) The facility shall be equipped with a telephone accessible to the rooms used by the children.

(g) If the only food served by the facility is an afternoon snack for the school-age children, a kitchen shall not be required if adequate refrigeration is available.

(h) Indoor areas for infants and toddlers shall be provided separated from areas used by older children. The infants and toddlers may participate in activities with older children for short periods of time.

(i) There shall be adequate crawling space for infants and toddlers protected from older children and away from general traffic patterns of the facility.

(j) A facility shall have lavatories in or immediately adjacent to changing areas used for infants and toddlers.

(k) If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded and out of the traffic pattern of older children.

(l) The Department of Housing, Buildings and Construction and the State Fire Marshal's office shall be contacted concerning planned new buildings, additions, or major renovations prior to construction.

(2) Grounds shall be provided as follows:

(a) On-site outdoor play areas shall be fenced for the safety of the children. A waiver to the fencing standards may be granted to those schools operating a before-and-after school program. Outdoor play areas shall be a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section. The area shall be free from litter, glass, rubbish, and flammable materials. The outdoor area shall be safe and drained; or

(b) If a facility does not have access to an outdoor play area, an indoor space shall be used as a play area and have a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(3) Equipment needed within the facility shall be as follows:

(a) Equipment and furnishings shall be clean and in good repair. There shall be safe play equipment, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 1 of this administrative regulation. Toys shall be too large to swallow, durable, and without sharp points or edges.

(c) Tables and chairs shall be of suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for each child's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3-1/2) hours per day. Cribs shall have a firm, comfortable waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. If mats are used, floors shall be free from drafts and dampness. Cots and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be used.

(h) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

(i) Chairs shall be provided for staff to use when feeding, holding or playing with children.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Amended After Hearing)**

**905 KAR 2:130. Child care discipline.**

RELATES TO: KRS **17.165, 199.894 to 199.898** [~~199.892 to 199.896, 45 CFR Part 98, Acts 1992, c. 57, p.412-419~~]

STATUTORY AUTHORITY: KRS 194.050, **199.896(2)** [~~199.892, Acts 1992, c. 57, p.413~~]

NECESSITY AND FUNCTION: KRS **199.896(2)** [~~199.892~~] grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to set discipline standards for child day care facilities.

Section 1. Discipline in Child Day Care Facilities. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall:

(1) Establish simple and consistent rules both for children and staff that set the limits of behavior;

(2) Not subject children to harsh or physical discipline;

(3) Not allow loud, profane, threatening, frightening or abusive language by staff or other persons on the premises; and

(4) Not associate discipline with rest, toileting, or food.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 5, 1993 at 11 a.m.

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 1993

**FINANCE AND ADMINISTRATION CABINET**
**Department of Information Systems**
**Kentucky Information Systems Commission**
**(Proposed Amendment)**

**14 KAR 1:010. Statewide strategic plan for information processing.**

RELATES TO: KRS 61.940, 61.945, 61.950, 61.955, 61.957
STATUTORY AUTHORITY: KRS 45.750, 61.945, 61.950
NECESSITY AND FUNCTION: KRS 61.940 and 61.955 establish the [~~designates an~~] Information Systems Commission and the Communications Advisory Council to the Kentucky Information Systems Commission to develop and implement plans for the effective and efficient use of computers, telecommunication, and information management [~~and related~~] systems in state government. KRS 61.945 makes the Kentucky Information Systems Commission responsible for the coordination of strategic planning for computerized information systems. KRS 61.955 makes the Communications Advisory Council responsible for the development and coordination of statewide communication plans for the efficient use of communications technology within state government. KRS 61.950 requires the commission to formulate a statewide information resources management [~~electronic data processing~~] plan and authorizes the commission to promulgate regulations to that end. This regulation establishes procedures to be followed in the formulation of a statewide information resources management [~~electronic data processing~~] plan for state government. As authorized by KRS 45.750, the amendments to this regulation also define the terms "computer or telecommunications system" for the purpose of determining capital project status under KRS 45.750 to 45.810 and also reflect the extension of the commission's planning process to all forms of communications and to institutions of higher education. These amendments also change the dates associated with submission and review of plans to better coincide with the schedules of the Capital Planning Advisory Board and the biennial budget process and make other changes to bring the regulations into compliance with the provisions of KRS Chapter 13A.

Section 1. [~~2.~~] Definitions. (1) "Agency" means all constitutional officers, departments, boards, councils, commissions, independent offices, institutions of higher education and other organizations [~~(exclusive of the universities)~~] within the three (3) branches of government [~~and the constitutional offices~~].

(2) "Application" means a [~~total,~~] discrete automated process, consisting of interrelated computer software and communications programs that are designed to fulfill specific information management needs.[~~, that performs the informational requirement of an agency.~~]

[~~(3) "Automated informational need" means an informational requirement of an agency that is needed to accomplish an essential function and can be produced most effectively and economically through the use of electronic information processing equipment. For the purpose of this regulation, an automated informational need also includes instruction, research, production, and control process requirements that are dependent upon the use of electronic information processing equipment.~~]

(3) [~~(4)~~] "Chairman" means the chairman of the Kentucky Information Systems Commission.

(4) [~~(5)~~] "Commission" means the Kentucky Information Systems Commission [~~as created by KRS 61.945~~].

(5) [~~(6)~~] "Communication costs" or "telecommunication costs" means the costs of data, voice, video, or radio transmission and associated telecommunications hardware, including modems, switches, bridges and routers. [~~circuits (dedicated lines and dial up lines) and modems or digital service units.~~]

(6) "Computer or telecommunications system" means a related group of computer or telecommunications hardware which contains:

(a) A minimal functional configuration, plus;

(b) Peripheral devices;

(c) Communications connections and wiring equipment necessary to enable the interpretability of the system components; and

(d) Workstations.

[~~(7) "DIS" means the Division of Information Systems.~~

~~(8) "First year" means the first fiscal year of the fiscal biennium.~~]

(7) [~~(9)~~] "Information processing hardware" means information technology equipment designed for the automated storage, manipulation, transmission, reception and retrieval [~~of~~] data by electronic means, [~~or mechanical means,~~] or both, and to include: [~~includes, but is not limited to:~~]

(a) [~~Central~~] Processors, including mainframe, miniprocessors and microprocessors;

(b) Auxiliary or peripheral equipment including, but not limited to [~~such as~~] data storage devices, data input devices, or data out[~~put~~] devices;

(c) [~~Data transmission or data~~] Communications equipment;

~~(d) Word processors whether supported by a computer or self standing (electronic office machines with removable storage and/or fixed storage capacity upgradable beyond 3000 characters); and~~

~~(e) Automatic typewriters if supported by a computer (electronic office machines with no removable storage and a maximum fixed storage capacity of 3000 characters or less)~~].

(8) "Information resources" means the equipment, software and related services that are secured and maintained by an agency to manage information including the actual information.

[~~(10) "Information processing resources" means information processing hardware, software and services, supplies, personnel, facility resources, maintenance, training, or other related resources necessary to fulfill an automated informational need.~~

~~(11) "Information processing software" means the programs and routines used to employ and control the capabilities of information processing hardware, including, but not limited to:~~

~~(a) Operating systems;~~

~~(b) Compilers;~~

~~(c) Assemblers;~~

~~(d) Utilities;~~

~~(e) Library routines;~~

~~(f) Maintenance routines;~~

~~(g) Applications; and~~

~~(h) Computer networking programs.~~]

(9) [~~(12)~~] "Information resources plan" means a plan which presents an agency's automated informational needs for at least [~~each of~~] two (2) years, and an estimate of information processing resources and funds which are necessary to support those needs.

(10) [~~(13)~~] "Manager" means the information resource manager appointed by each agency.

(11) "Minimum functional configuration" means a configuration comprised of computer or telecommunications hardware to include:

(a) A main central processing unit (CPU) with minimum amount of internal memory in a minimum amount of hard disk storage;

(b) A system console composed of a monitor and keyboard;

(c) An external media device through which software can be loaded into the system, including, but not limited to a diskette drive or tape drive; and

(d) Any controllers and cabling necessary to connect and enable the components listed in this subsection.

(12) [~~(14)~~] "Personnel costs" means the cost of personnel

salaries, [(] including any step increases [)] and fringe benefits.

[(16) "Second year" means the second fiscal year of the fiscal biennium.]

(13) [(16)] "Statewide strategic plan" or "long-range statewide strategic plan" means a document, updated biennially, that:

(a) Examines the information systems and communication needs of state government;

(b) [current automated informational needs and information processing resources in state government,] Recommends ways in which information and technology resources can be used to address those needs;

(c) Recommends priorities, funding mechanisms and policies to support acquisition and maintenance of those resources over time; and

(d) Establishes direction for future information resource development. [information processing hardware and software to support the individual mission of agencies, and establishes guidelines for future information systems development.]

Section 2. [1.] Applicability. This regulation provides for participation by all agencies within the three (3) branches of state government and the constitutional offices of state government, [with the exception of the universities,] in the formulation of a long-range statewide information resources plan [electronic data processing plan] to be developed, published and monitored by the Kentucky Information Systems Commission. While each agency has primary responsibility for the management, planning and operation of its information resources, the commission has the responsibility to ensure that the information resource needs of the Commonwealth are considered along with, and not made subordinate to, the needs of an individual agency.

Section 3. Commission Responsibility. The commission shall determine the [statewide] information resource [processing] needs of state government based upon:

(1) The [automated informational needs of the agencies reported in] agency information resources plans;

(2) The priorities of the governor and the legislature; and

(3) The recommendations received from organizations and constituencies represented on the commission membership. [, and shall design, implement and perpetuate a long range statewide strategic plan for information processing.]

Section 4. Agencies to Submit Information Resources Plan. Each agency shall submit to the commission a plan which describes the ways in which the agency will deploy information resources to support the programmatic agenda and administrative functions of the organization [that addresses the projected automated informational needs of the agency] for the two (2) upcoming fiscal biennial [biennium], in a format prescribed by the commission, no later than April 15 [July 1] of the second year of the current fiscal biennium. The plan shall include at a minimum:

(1) The strategic objectives of the agency relating to information [processing] resources [for the upcoming fiscal biennium];

(2) The existing information [processing] resources within the agency and the costs associated with the use of these resources;

(3) A brief description of how the existing resources are used to meet the duties and functions of the agency;

(4) A brief description of the methodology used to evaluate both the efficiency of resource utilization and the impact of those resources;

(5)(a) The proposed information [processing] resource projects, acquisitions, and conversions or enhancements for the upcoming fiscal biennial [biennium];

(b) The anticipated results to be achieved by these projects, acquisitions, and conversions; and

(c) The measurable benefits to be derived from same;

(6) The personnel, [information processing] hardware, software and services, facility resources, and other related equipment, services or resources which shall [will] be necessary to meet the project[ed automated informational needs] of the agency together with the estimated cost of the resources described;

(7) [Alternative information processing resources that would meet the needs of the agency, together with the estimated cost of each alternative;

(8)] A general description of the existing physical and data security programs and future plans for assuring the security and integrity of data and information processing resources;

(8) [(9)] A [general] description of the anticipated growth of information resources [automated informational] needs within the agency the four (4) [two (2)] years immediately following the two (2) fiscal years included in the plan, including the strategy the agency will employ to manage that growth;

(9) [(10)] A brief statement on how proposed [automation] plans will impact the overall records keeping and processing systems (manual as well as automated) of the agency, to be produced in cooperation with the agency's records officer; and

(10) [(11)] Other planning components that the commission may prescribe by administrative regulation.

[The agency may submit additional information as it feels necessary to completely present its plan.]

Section 5. Statewide Strategic Plan Development. [Pursuant to its responsibility,] The commission shall:

(1) [In consultation with DIS,] Develop and publish instructions and guidelines no later than November 15 [April 15] of every first year of the fiscal biennium, that describe the planning components, specify format, and specify the criteria upon which agency information resources plans will be evaluated. At a minimum, the criteria shall include:

(a) The technical feasibility of the plan;

(b) The cost estimates provided for each resource and the methodology employed by the agency to determine the [such] cost;

(c) The measurable benefits to be derived by the agency and the Commonwealth as a whole;

(d) The extent to which the plan complies with the stated direction of the Commonwealth's Statewide Strategic Plan for Information Resources [Processing].

(2) [In consultation with DIS,] Review and approve or disapprove each agency plan no later than July 1 [September 1] of every second year of the fiscal biennium. Upon final action [approval,] the commission shall forward copies of the plan with recommendations to the Legislative Research Commission and to the Governor's Office for Policy and Management [DIS]. Upon disapproval, the basis for disapproval shall be presented to the information resources manager of the agency in writing. [The manager shall have fifteen (15) days to resolve the problem. If resolution is not possible within fifteen (15) days, the manager shall notify the commission in writing of the reasons why the agency is unable to resolve the identified problems.] The commission may reevaluate the plan or work with the agency to resolve the problem at its discretion;

(3) [In consultation with DIS,] Review and approve or disapprove changes in or supplements to the plans as they are presented by the agencies;

(4) Identify and assess opportunities for multiagency development and use of information resources and, when deemed appropriate by the commission, require agencies to include these opportunities as alternatives in their plans. Those opportunities for shared development and use of information resources shall include[, but shall not be limited to the following areas]: common data bases, networking, security and disaster recovery. Opportunities for multiagency development and use of information resources shall be reported to the Legislative Research Commission in a format prescribed by the chairman.

Section 6. Supplements or Amendments [~~Changes~~] to Agency Information Resource Plans. An agency may, at any time, submit to the commission for approval supplements or amendments [~~changes~~] to an information resources plan. The reasons for these [~~such~~] supplements or amendments shall [~~changes must~~] be adequately explained [~~and should reflect one (1) of the following conditions:~~

~~(1) A change in the duties or functions of the agency;~~

~~(2) A response to technological advancements; or~~

~~(3) A reassessment of the appropriateness of specific information resources cited in the plan.~~

~~Upon approval of the plan supplement or change, the commission shall forward copies to the Legislative Research Commission and to DIS.~~] An amendment [~~change~~] to the current plan should identify the paragraphs, subparagraphs and appendices that are being amended. If the amendment [~~change~~] is extensive, an entire revised plan shall [~~should~~] be submitted. Amendments [~~Changes~~] or supplements to the plan shall [~~must~~] be signed as approved by agency heads or their designees. The commission may delegate to the chairman authority to certify resources as being a part of approved information resources plans, or approved amendments [~~supplements or changes~~] to those plans. The commission shall take action on each amendment, and shall document and file its action with the amendment as part of the official plan record.

Section 7. Statewide Strategic Plan and Budget Process. Beginning with the biennial budget cycle for the 1988-90 biennium, the statewide strategic plan shall be developed to assist the heads of the constitutional offices, the executive, judicial and legislative branches, and the General Assembly in preparation and enactment of the biennial budget. To this end, copies of the statewide strategic plan shall be provided by the commission to the heads of the constitutional offices, the heads of the respective branches, the heads of the respective branch budget offices, and to the Legislative Research Commission before November 15, of each second year of the fiscal biennium.

Section 8. Information Resources Manager. Each agency head, or designee, shall serve as the information resource manager and shall:

(1) Be responsible for preparation of the agency information resources plan;

(2) Act as liaison with the commission; and

(3) Possess a thorough knowledge of all aspects of the agency's information resources plan [~~and be able to provide specific reference indicating where an information resource is provided for in an approved plan or supplement~~].

Section 9. Capital Project. A procurement of a computer or telecommunications system shall be a capital project for purposes of KRS 45.760 to 45.810, if it meets at least one (1) of the following criteria:

(1) The unit price for the procurement of any computer or telecommunications hardware exceed the sum of $100,000;

(2) The total cost of a minimum functional configuration of computer or telecommunications hardware exceeds $100,000;

(3) The total cost of procuring a computer or telecommunications system exceeds $200,000.

DONALD R. SPEER, Chairman

APPROVED BY AGENCY: February 12, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 30, 1993 at 1 p.m. in Room 285, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by March 25, 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: Linda Pittenger, Department of Information Systems, 101 Cold Harbor Drive, Frankfort, Kentucky 40601, (502) 564-8951.

REGULATORY IMPACT ANALYSIS

Contact person: Linda Pittenger

(1) Type and number of entities affected: All state agencies, including the public universities, and constitutional offices who use or plan to use information technologies.

(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: Agencies are required to submit plans every other year to the Information Systems Commission which describe their requirements for computing and communications technologies, their strategies for deploying those technologies, and the projected costs associated with acquisition, support, and maintenance of information resources. This amendment reflects an expansion of plan scope and participation enacted by the 1992 General Assembly, refines definitional language, and changes the dates associated with plan submission and review. The proposed change in the regulation does not add additional reporting or paperwork requirements.

(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:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Maintaining the existing plan schedule would have resulted in conflicts with the six-year capital improvements planning process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? The amendments to this regulation have been narrowly tailored to only apply to state agencies and public universities with regard to planning for computing and communications equipment.

## GENERAL GOVERNMENT CABINET
## Department for Commission on Human Rights
## (Proposed Amendment)

**104 KAR 1:010. Posting, distribution and availability of notices and pamphlets.**

RELATES TO: KRS [~~Chapter~~] 344.190

STATUTORY AUTHORITY: KRS 13A.100, 344.190(14)

NECESSITY AND FUNCTION: This administrative regulation establishes the requirements governing the posting, distribution, and availability of notices by persons covered by KRS 344.010 to 344.500, 344.600 to 344.680 [344.450] and 344.990.

Section 1. Equal [Fair] Employment Opportunity [Practices] Notices. (1) An [Every] employer, employment agency, licensing agency and labor organization subject to KRS 344.010 to 344.500, 344.600 to 344.680 [344.450] and 344.990, shall post and maintain at its establishment equal [their establishments the fair] employment opportunity [practices] notices [incorporated by reference. "Fair Employment Practice Notice (February, 1992)" is incorporated by reference. It may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m].

(2) Equal [(1) Fair] employment opportunity [Practices] notices shall be posted so as to be readily apparent to an employee [employees] and applicant[s] for employment. They shall be posted:

(a) In easily-accessible and well-lighted places; and

(b) At or near each location where the employee's services are performed.

(3) A [(2)] Labor organization[s] shall post "equal [fair] employment opportunity [practices]" notices [shall be posted] in easily-accessible and well-lighted places so as to be readily apparent to member[s] and an applicant[s] for membership.

Section 2. Public Accommodations Welcome Notice[s]. (1) An [Every] owner, lessee, proprietor, or manager of a [any] place of public accommodation, resort, or amusement, shall post and maintain at a [any] place of public accommodation, resort or amusement welcome notices. [the "Public Accommodation Notice". The "Public Accommodation Notice (February, 1992)" is incorporated by reference. It may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.]

(2) Public accommodation welcome notices shall be posted where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of places of public accommodations, resort or amusement. [so as to be readily apparent to employees and applicants for employment. They shall be posted:

(a) In easily-accessible and well-lighted places; and

(b) At or near each location where the employee's services are performed.]

Section 3. Equal [Fair] Housing Opportunity Notices. (1) A [Every] person or business entity subject to KRS 344.360, [and] 344.367 and 334.600 to 344.680 shall post and maintain at each location [and elsewhere,] where [their] services are regularly performed, the equal [fair] housing opportunity notices [incorporated by reference. These notices may be obtained and copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m].

(2) Equal opportunity [Fair] housing notices shall be posted at each [every business] location [and elsewhere,] where services are regularly performed, in an easily-accessible and well-lighted place so as to be readily apparent to a person [all persons] seeking services.

Section 4. Fair Housing Law Pamphlets. A person or entity engaged in real estate or real estate-related transactions and [Notice to Owners Listing Property. Every real estate operator, real estate broker, real estate salesperson, financial institution, builder, developer and insurer] subject to KRS 344.360, 344.367, 344.370 and 344.600 to 344.680 [344.010 to 344.450 and 344.990] shall provide to owners and customers [of real property] at the time of [they contract for the] sale, purchase, rental, insuring [or rent,] or financing of real property, a copy of the pamphlet "What Kentucky's Fair Housing Law Means". [Your Rights and Responsibilities Under Kentucky's Civil Rights Act" incorporated by reference. The pamphlet may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.]

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Equal Employment Opportunity Notice (February, 1993)";

(b) "Public Accommodations Welcome Notice (February, 1993)";

(c) "Equal Housing Opportunity Notice (February, 1992)";

(d) Pamphlet: "What Kentucky's Fair Housing Law Means (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) 595-4024, Extension 251 (TDD), for the hearing impaired.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: All employers, licensing agencies, labor organizations, business establishments, persons and entities involved in real estate or real estate-related transactions covered by the Kentucky Civil Rights Act.

(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: Will reduce number of mail inquiries and telephone inquiries concerning posting requirements.

(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: No anticipated effect on state and local revenue is contemplated by the regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The posting of notices and distribution of pamphlets allows both the public and affected businesses to comply with the Kentucky Civil Rights Act.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this regulation were required because of amendments to KRS Chapter 344 by the GA in 1992 which included persons with disabilities and families with children as protected persons.

TIERING: Was tiering applied? No. Tiering was not applied because this regulation has the same effect upon all entities required to post notices. All persons subject to this administrative regulation must be treated equally. To differentiate would violate equal protection and due process.

## GENERAL GOVERNMENT CABINET
## Department for Commission on Human Rights
## (Proposed Amendment)

**104 KAR 1:020. Administrative proceeding [~~under the Kentucky Civil Rights Act~~].**

RELATES TO: KRS [~~Chapter~~] 344.010 to 344.500, 344.600 to 344.680, 344.990

STATUTORY AUTHORITY: KRS 13A.100, 344.190, 446.030

NECESSITY AND FUNCTION: This administrative regulation informs the public of the procedures followed by the Kentucky Commission on Human Rights in processing and conciliating complaints of unlawful discrimination under KRS 344.010 to 344.500, 344.600 to 344.680 and 344.990.

[~~Section 1. Definitions. (1) "Act" means the Kentucky Civil Rights Act, KRS Chapter 344.~~

~~(2) "Investigator" means a member of the commission staff designated by the executive director to investigate the allegations of the complaint and make a determination of whether there is probable cause, or a commissioner appointed by the chairman.~~]

Section 1. [~~2.~~] Complaint. (1) Filing.

(a) Assistance in [~~drafting and~~] filing complaints shall be available to complainants at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.[~~, at any other commission office, and from any commission staff member.~~]

(b) Complainants may provide information to be contained in a complaint by telephone to the Kentucky Commission on Human Rights at (502) 595-4024 or (800) 292-5566 (voice) or (502) 595-4024, ext. 251 (TDD).

(c) The Kentucky Commission on Human Rights may reduce information received by telephone to writing on the prescribed complaint form and may send it to the complainant to be signed unless the information fails to establish a violation of KRS 344.010 to 344.500, 344.600 to 344.680, and 344.990.

(d) [~~(b)~~] Upon the receipt of a communication from the Federal Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD) that [~~transmitting~~] a complaint [~~which~~] has been submitted [~~to that agency~~], the executive director[~~, acting in the name of the commission,~~] may issue a complaint in writing and attach any [~~thereto the~~] materials transmitted from the federal government[~~, if any~~].

(2) Complaint form. The complaint:

(a) Shall be in writing. [~~and~~]

(b) The commission shall provide a complainant with a "Complaint Form". [~~(February, 1992), hereby incorporated by reference to aid the complainant if so desired. This form may be inspected, obtained or copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

(c) The complaint shall be signed and affirmed or sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.

(d) Notarial service shall be furnished without charge by the commission.

(3) Computation of time.

(a) If the alleged discriminatory practice is of a continuing nature, the date of the occurrence of the [~~said~~] practice shall be deemed to be any date subsequent to the commencement of the practice.

(b) The date of the occurrence shall include [~~up to and including~~] the date on which the:

1. Practice shall have ceased; or

2. [~~the date on which the~~] Complaint shall have been filed, if the unlawful practice continues.

(c) In computing the time for timely filing of a complaint, the following shall apply:

1. The day of the occurrence of the alleged discriminatory practice shall not be included;

2. The last day of the occurrence of the alleged discriminatory practice shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the computation period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) Place of filing. A complaint shall be filed with the commission at its office in Louisville.

(5) Manner of [~~in~~] filing.

(a) The complaint may be filed by personal delivery or mail to the commission's office in Louisville.

(b) A complaint may be delivered to:

1. A commissioner; [~~or~~]

2. A member of the commission's staff; or

3. [~~to~~] Any other commission office. It shall be the responsibility of the person or office with whom a complaint is filed to timely file the complaint [~~for filing~~] at the commission's Louisville office.

(6) Amendment of complaint.

(a) The commission, the presiding hearing commissioner, or the complainant shall have the power reasonably and fairly to amend a complaint.

(b) Amendments may include amendments to:

1. Cure technical defects or omissions;

2. Amplify the allegations in the complaint; or

3. The joinder of additional or substitute respondents.

(c) The presiding hearing commissioner shall determine which amendments not specified in this subsection are reasonable or fair amendments.

(d) Prior to the issuance of a notice of hearing:

1. A complainant may have the complaint amended; or

2. With the consent of the complainant, the complaint may be amended by the commission.

(e) After the issuance of a notice of hearing, a complaint may be amended if the presiding hearing officer approves.

(f)1. If a complaint is amended, the respondent may request that the hearing be postponed.

2. A hearing shall not be postponed for more than ten (10) days after the original hearing date.

[(a) The power to amend a complaint may be exercised prior to the issuance of a notice of hearing by the commission staff with the consent of the complainant and after the issuance of a notice of hearing by the presiding hearing commissioner with the consent of the complainant.

(b) The complainant's power to amend the complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the presiding hearing commissioner.

(c) If a complaint is amended, postponement of the hearing date may be granted to the respondent upon a request to the commission. In no event shall the hearing date be more than ten (10) days later than the original hearing date.]

(7) Withdrawal of complaint. A complainant may withdraw the complaint, or any part of the complaint, without prejudice if the complainant:

(a) Files a written request stating the reasons for withdrawal; and

(b) Written consent is obtained from the:

1. Executive director, if the request is made before the issuance of a notice of hearing; or

2. Chairperson of the commission or presiding officer, if the request is made after the issuance of a notice of hearing. [Upon the written request of the complainant, stating the reasons for a request, a complaint or any part thereof, may be withdrawn:

(a) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the executive director shall be obtained.

(b) If the request for withdrawal is made after the case has been noted for hearing, the written consent of the chairman shall be obtained.

(c) In either case of withdrawal, withdrawal shall be without prejudice to the rights of the complainant.]

Section 2. [3.] Notice of Hearing. (1) The executive director shall schedule a hearing and report [same] to the chairperson [chairman who shall thereupon appoint a presiding hearing commissioner and may appoint one (1) or more additional hearing commissioners].

(2) Notice of hearing. If a party is represented by an attorney, a copy of the notice of hearing, [and] complaint, any other documents, and any other amendments to documents [as the same may have been amended], shall be furnished to the [said] attorney.

(3) Place of hearing.

(a) A [The place of any] hearing shall be held at an [any] office of the commission or any other place [as may be] designated by the commission. A complainant or respondent may request that the location of a hearing be changed. [The commission shall give consideration to a request for a change of hearing location made by the complainant or the respondent.]

Section 3. [4.] Answer to Complaint. (1) Filing of answer.

(a) The respondent [shall] or the respondent's attorney of record shall answer the complaint or amended complaint.

(b) The answer shall be:

1. In writing;

2. [and] Signed by the respondent or respondent's attorney of record; and

3. Filed with two (2) copies at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

(2) Content.

(a) The answer shall state in short and plain language [terms] the defenses to each claim asserted.

(b) The answer also [and] shall admit or deny the allegations in the complaint.

(c) A defense of lack of jurisdiction shall be specifically stated in the answer. The defense shall include [, together with] a brief statement of facts upon which the respondent relies for this defense

(d) If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state.

(e) The answer shall contain the mailing address of:

1. The respondent; and

2. If applicable, respondent's attorney of record.

(3) Manner of filing. The answer shall [may] be filed by:

1. Registered or certified mail addressed to the office of the commission in Louisville; or

2. [by] Delivery to the [said] office[s].

(4) Failure to deny or admit. Failure to state in respondent's answer that respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation shall be deemed an admission of the allegation. [Failure to deny or admit an allegation in the complaint, unless the respondent shall state in the answer an absence of knowledge or information sufficient to form a belief, shall be deemed an admission of allegation.]

(5) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Extension of time for filing. Upon application, the chairperson [chairman] or the presiding hearing commissioner may for good cause shown extend the time within which an [the] answer may be filed.

(7) Amendments of answer. An original amended answer with two (2) copies [of the amended answer] shall be filed with the commission as provided in subsection (3) of this section.

Section 4. [5.] Hearing Procedures. (1) Appearances.

(a) If possible, [Whenever practicable] the complainant or the party on whose behalf the complaint was filed, attorney shall appear at the hearing to testify [, with or without counsel, the submit testimony].

(b) The complainant, the Attorney General, and other permitted persons or [in the discretion of] the presiding hearing commissioner[, any person] may intervene, examine and cross-examine witnesses, and present evidence.

(2) Who shall conduct.

(a) Hearings shall be conducted before one (1) or more [hearing] commissioners [to be] appointed by the chairperson [chairman].

(b) If [In the event] more than one (1) hearing commissioner is appointed, the chairperson [chairman] shall designate one (1) of them [the hearing commissioners] to act as presiding hearing commissioner.

(3) Power and duties of the presiding hearing commissioner. The presiding hearing commissioner shall:

(a) [have full authority to] Control the procedure of a hearing;

(b) [to] Admit or exclude testimony or other evidence;

(c) [and to] Rule upon [all] motions and objections;

(d) [. The presiding hearing commissioner shall] Make full inquiry into [all] the facts in issue;

(e) [and shall] Obtain a full and complete record of [all] facts necessary for a fair determination of the issues.

(4) Procedure.

(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. [However,] Irrelevant, immaterial, or unduly repetitious evidence shall be excluded [and the rules of privilege shall be given effect].

(b) Two (2) or more proceedings [under the act] may be joined by the commission.

(5) Stipulations. The parties may file a stipulation as to any relevant matter [the facts, in which event the same shall be numbered and used at the hearing]. A stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments.

(a) A hearing commissioner may:

1. Continue a hearing from day to day;

2. Adjourn a hearing to a later date or to a different place.

(b) A hearing commissioner may continue or adjourn a hearing by:

1. Announcement at the hearing; or

2. Other notice to all parties. [~~The hearing commissioners may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.~~]

(7) Motions and objections. A motion or objection [~~Motions~~] made during a hearing, [~~and objections with respect to the conduct of a hearing,~~] including objections to the introduction of evidence, shall be:

(a) Made [~~stated~~] in writing or orally; and

(b) [~~shall be~~] Included in the record of a hearing [~~the hearings~~].

(8) Oral arguments and briefs. The presiding hearing commissioner shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to present oral argument [~~argue orally before the hearing commissioners~~] and to file briefs. [~~Oral arguments shall not be included in the record unless the presiding hearing commissioner shall so direct.~~]

(9) Improper conduct. The presiding hearing commissioner may exclude from the hearing room or from further participation in the proceeding a [~~any~~] person who engages in improper conduct before the hearing commissioners.

(10) Waiver of hearing. If a hearing has not been held, or if findings of fact or conclusions of law have not been made, an order may be entered if:

(a) The respondent has consented in writing; and

(b) Written notice has been given to all parties. [~~With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fast or conclusion of law.~~

~~(11) Public hearings. All commission hearing shall be open to the public unless the chairman or the presiding hearing commissioner directs a closed hearing.~~]

(11) [~~(12)~~] Written transcript of the record. The written transcript of the record of a [~~upon the~~] hearing [~~before the hearing commissioners~~] shall consist of:

(a) The notice of the hearing;

(b) The sworn complaint and amended complaint if applicable; [~~as the same may have been amended,~~]

(c) The answer and amended answer if applicable; [~~, as the same may have been amended,~~]

(d) The transcript of the testimony taken at the hearing;

(e) [~~the~~] Exhibits and depositions offered in evidence;

(f) Written applications;

(g) Briefs;

(h) Orders;

(i) Motions;

(j) Oral arguments; [~~if directed by the hearing examiner,~~]

(k) Stipulations;

(l) The findings of fact;

(m) Conclusions of law; and

(n) The final order of the commission.

Section 5. Issuance of Subpoena. (1) If [~~6. Discovery. Subpoenas. Where~~] a subpoena or subpoena duces tecum is [~~applied for and~~] issued at the request [~~instance~~] of a [~~any~~] party to a hearing or other proceeding, the cost of service, witness and mileage fees[~~, if any,~~] shall be borne by the party who [~~at whose instance it has been~~] requested the subpoena.

(b) If [~~and issued. Where~~] a subpoena or subpoena duces tecum is issued by order [~~at the instance~~] of a [~~any~~] commissioner or the executive director, the cost of service, witness, and mileage fees[~~, if any,~~] shall be borne by the commission.

Section 6. Disclosure of Conciliation Discussions and Agreements. (1) Each party's written consent shall be obtained prior to the release of information relating to conciliation discussions.

(2) The commission may make public a conciliation agreement or any part thereof.

Section 7. Filing of Orders. An order [~~All orders~~] issued by the commission after a hearing shall be filed in the commission's office in Louisville.

Section 8. Certification. The chairperson [~~chairman~~] or the executive director shall [~~is authorized and empowered to~~] certify [~~all~~] documents or records which are a part of the files and records of the commission.

[~~Section 9. Construction of Administrative Regulations and Pleadings. (1) Administrative regulations shall be liberally construed to effectuate the purposes and provisions of KRS 334.010 to 344.450 and 344.990 and the policies of the Kentucky Commission on Human Rights.~~

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

Section 9. [~~10.~~] Creation of Administrative Regulations [~~Rules~~]. (1) An administrative regulation [~~Rules of practice and procedure~~] may be promulgated [~~adopted,~~] amended, or repealed [~~rescinded~~] by the commission at a regular or special meeting.

(2) Notice of the proposed promulgation [~~adoption~~], amendment, or repeal of an administrative regulation [~~recision~~] shall be given in writing to all members of the commission at least ten (10) days before the meeting.

(3) [~~; except that~~] Ten (10) days notice shall not be required if [~~when~~] two-thirds (2/3) of the members [~~membership~~] of the commission [~~shall~~] approve in writing the promulgation [~~any adoption~~], amendment, or repeal of an administrative regulation. [~~recision. Provided further, all amendments and the process for amending commission administrative regulations shall comply with KRS Chapter 13A.~~]

Section 10. [~~11.~~] General Investigations. The commission may conduct general investigations into the problems of discrimination and may study and report upon the problems of the effect of discrimination on any field of human relationships.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Complaint Form (February, 1993)"; and

(b) "Instructions for Completing the Complaint Form (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 295-5566;

3. (502) 595-4024, extension 251, (TDD), for the hearing impaired.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville,

Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: Any person filing or responding to a complaint of discrimination.

(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: Allows for uniform procedure for processing complaints and gives the public notice of the procedure. Should minimize commission staff time spent answering questions on how to file a complaint.

(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 will be no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered because the promulgation of this regulation will give all persons sufficient notice.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because the regulation has the same effect upon all affected parties. To differentiate would violate equal protection and due process.

**GENERAL GOVERNMENT CABINET**
**Department for Commission on Human Rights**
**(Proposed Amendment)**

**104 KAR 1:030. Recordkeeping and Reporting by employers, labor organizations and employment agencies. [~~Employer records and reports.~~]**

RELATES TO: KRS [~~Chapter~~] 344.040, 344.060, 344.500

STATUTORY AUTHORITY: KRS 13A.100, 344.250

NECESSITY AND FUNCTION: This administrative regulation establishes [~~sets forth~~] the procedures to be utilized by employers, labor organizations and employment agencies [~~established by the Kentucky Commission on Human Rights~~] with respect to the maintenance and preservation of employment records and employment reports.

Section 1. Definition[~~s~~]. (1) "[~~Personnel~~] Records relevant to the determination [~~complaint~~]" means all:

(a) Personnel or employment records relating to the complainant and [~~of~~] other employees holding positions similar to that held or sought by the complainant;

(b) Application forms or test papers completed by the complainant and [~~results~~] of other applicants for the same position; and

(c) Personnel or employment records relating to the complainant.

(2) "Final disposition of the complaint" means the expiration of the statutory period within which the complainant may [~~for an~~] appeal [~~of~~] an administrative [~~or judicial~~] order or commence a judicial action

Section 2. Employer Information Report. (1) Upon receipt of a complaint of employment discrimination, an employer shall provide a current employer information report.

(a) The report shall include a workforce breakdown of the employers' temporary and permanent employees within the Commonwealth of Kentucky.

(b) The report shall contain a breakdown of the employers' workforce by:

1. Race;

2. Age;

3. National origin; or

4. Sex.

(c) An employer may acquire the information necessary for completion either by:

1. Visual surveys; or

2. By the maintenance of postemployment records.

(d) Postemployment records which identify employees by race, color, religion, disability, age, national origin or sex shall be kept separately from personnel records available to those responsible for personnel decisions.

(3) [~~(1)~~] An employer may substitute a comparable federal government employer information [~~employee workforce breakdown~~] report.

(4) [~~(2)~~] If the comparable government employer information report does not provide a current workforce breakdown descriptive of employees [~~the employer's~~] actual job categories, the employer shall update or modify the information contained in the report.

Section 3. Preservation [~~Retention~~] of Records Made or Kept. (1) A [~~Any~~] personnel or employment record made or kept by an employer shall be preserved by the employer, for example, requests for reasonable accommodation, application forms, and other records having to do with hiring, promotion, demotion, transfer, lay-off, termination, and terms of compensation for a period of one (1) year [~~six (6) months~~] from the date of the making of the record or the personnel action involved, whichever occurs later.

(2) Upon receipt of [~~The personnel records of a terminated employee shall be kept for a period of six (6) months from the date of termination.~~

~~(3) If~~] a complaint of discrimination [~~has been filed~~], the respondent employer shall preserve all employee personnel records relevant to the determination [~~complainant~~] until final disposition of the complaint.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days

prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: All employers in Kentucky covered by the Kentucky Civil Rights Act.

(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: Persons affected by the regulation will be able to substitute other governmental reports to the Kentucky Commission on Human Rights which will reduce duplication of employee record reporting.

(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 will be no anticipated effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to require companies to duplicate a report previously provided to a governmental agency. That procedure would result in additional expenses to an employer.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy conflicts with this regulation. This regulation was implemented to avoid an employee duplication on another format information previously provided to the federal government.

(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: Under the current regulation requiring only 6 months' retention of records, an employer or labor organization may have already destroyed its employment record before it is notified that a complaint has been filed.

TIERING: Was tiering applied? No. Tiering was not applied because all respondents complying with a document request will be similarly affected. To differentiate would violate equal protection and due process.

## GENERAL GOVERNMENT CABINET
## Department for Commission on Human Rights
## (Proposed Amendment)

**104 KAR 1:040. Guidelines for advertising employment or licensing opportunities [~~advertisement~~].**

RELATES TO: KRS [~~Chapter~~] 344.040, 344.050, 344.060, 344.070

STATUTORY AUTHORITY: KRS 344.190, 344.080, 29 CFR 1604.5

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to be used by an employer, licensing agency, labor organization or employment agency in advertising for jobs or licensing opportunities. [~~is designed to eliminate job advertisements which discriminate against persons covered under KRS 344.010 to 344.450 and 344.990.~~]

Section 1. Help Wanted Notices or Advertisements. (1) An advertisement or notice shall utilize a neutral job qualification, title, term, phrase or description unless a person's [~~if the job is not a job for which~~] sex, religion, age forty (40) to seventy (70), or national origin is deemed by the commission to be [~~not~~] a bona fide occupational qualification.

(2) Employers shall, if possible, utilize gender neutral position titles and job descriptions selected from the commission's listing of "Gender Neutral Employee Advertisement" or "Gender Neutral Employment Terminology." [~~(a) "Listing of Terms Considered Discriminatory With Regard to Employment Advertising" (February, 1992) is incorporated by reference.~~

~~(b) This document may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. through 4:30 p.m.~~]

Section 2. Bona fide Occupational Qualification. (1) An employer, labor organization, licensing agency, or employment agency shall have the burden of establishing with the commission that either sex, religion, age forty-one (41) [~~forty (40)~~] to sixty-nine (69) [~~seventy (70)~~], or national origin is a bona fide occupational qualification.

(2) A sex or gender-based bona fide occupational qualification shall:

(a) Be necessary for reasons of personal modesty or privacy; and

(b) Comply with EEOC "Guidelines on Job Opportunity Advertising on the Basis of Sex".

[~~(c) This document may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. It may also be obtained from EEOC, 600 Dr. Martin Luther Jr. Place, Suite 260, Louisville, Kentucky 40202.~~]

Section 3. (1) A person who intends to publish, print, circulate, or display a job advertisement may request the commission to determine whether sex, religion, age forty-one (41) [~~forty (40)~~] to sixty-nine (69) [~~seventy (70)~~], or national origin is a bona fide occupational qualification for the job to be advertised.

(2)(a) Within three (3) workdays of receipt of the request, the commission shall:

1. Make a determination in writing; and

2. Forward its written determination.

(b) The determination of the commission shall be based on:

1. The specific job;

2. Whether the qualification is reasonably necessary to the normal operation of the business; and

3. Any [~~All~~] other pertinent factors.

Section 4. Newspapers and other publications which print employment advertisements shall be [~~are~~] encouraged by the commission to:

(a) Maintain lists of gender-neutral [~~nondiscriminatory~~] terms; and [~~to~~]

(b) Instruct their employees to advise advertisers of gender neutral job qualifications, titles and descriptions. [~~nondiscriminatory terms.~~]

Section 5. (1) In a conciliation agreement or order, the commission may include a provision requiring the respondent to use the term "equal opportunity employer [~~employment opportunity~~]", or a substantially similar term, in a notice or advertisement of employment or licensing opportunity.

(2) Persons advertising for employment opportunities shall be encouraged by the commission to use [~~A person may use~~] the terms specified in subsection (1) of this section in a notice or advertisement [~~on his own authority~~].

Section 6. Materials Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Gender Neutral Employee Advertisement (February, 1993)";

(b) "Gender Neutral Employment Terminology (February, 1993)";

(c) "EEOC Guidelines on Job Opportunity Advertising on the Basis of Sex: 29 CFR 1604.5 - Job Opportunities Advertising".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 295-5566;

3. (502) 595-4024, extension 251, (TDD), for the hearing impaired.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: Any person advertising an employment or licensing opportunity in Kentucky or business entity publishing the advertisement.

(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: This regulation provides for the availability of a listing of nongender specific terminology.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of notifying the public of permissible advertisements would still accomplish the same goal but possibly at a greater expense.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because the regulation affects all persons and entities advertising for employment or licensing opportunities the same. To differentiate would violate equal protection or due process.

## GENERAL GOVERNMENT CABINET
## Department for Commission on Human Rights
## (Proposed Amendment)

**104 KAR 1:050. Standards and procedures for providing equal employment opportunities [~~Guidelines on discrimination because of sex, religion, employment selection, and national origin~~].**

RELATES TO: KRS 344.010 to 344.500 [~~344.450~~], 344.990, 29 CFR 1604.1 to 1604.4, 1604.6 to 1604.11, 1605.1 to 1605.3, 1606.1 to 1606.8, 1607.1 to 1607.16, 1630

STATUTORY AUTHORITY: KRS 13A.100, 344.190, 29 CFR 1604.1-1604.11, 1605, 1607, 1630

NECESSITY AND FUNCTION: This administrative regulation establishes employment standards and procedures promulgated by the EEOC and enforced by the Kentucky Commission on Human Rights. [~~is designed to give Kentucky employers and employees the benefit of consistent interpretations of law by the Kentucky Commission on Human Rights, the Equal Employment Opportunity Commission, and the federal courts.~~]

Section 1. Employment Discrimination Guidelines. In the determination of issues prohibiting discrimination by KRS 344.010 to 344.500 and 344.990, the commission shall follow and enforce guidelines promulgated by the Equal Employment Opportunity Commission. [~~Religious Discrimination. EEOC "Guidelines on Discrimination because of Religion" is incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

Section 2. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "EEOC Guidelines on Discrimination Because of Religion (with Appendix A - Background Information): 29 CFR 1605.1 to 1605.3".

(b) "EEOC Guidelines on Sex Discrimination (with Appendix to Part 1604 - Questions and Answers on the Pregnancy Discrimination Act): 29 CFR 1604.1 to 1604.4 and 1604.6 to 1604.11".

(c) "EEOC Uniform Guidelines on Employee Selection Procedure, 29 CFR 1607.1 to 1607.16".

(d) "EEOC Guidelines on Discrimination Because of National Origin, 29 CFR 1606.1 to 1606.8".

(e) "Equal Employment Opportunity for Individuals with Disabilities" with Interpretive Guidance on Title I of the Americans with Disabilities Act and the Final Rule and Regulations, 29 CFR 1630".

(2) This material may be inspected, copied or obtained:

(a) At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) 595-4024, Extension 251 (TDD), for the hearing impaired.

(c) The material referred to in subsection (1)(e) of this section is also available in the following alternative formats directly from the office of the Americans with Disabilities Act at (202) 514-0301 (voice), (202) 514-0318 (TDD) or (202) 514-6193 (electronic bulletin board):

1. Large print;

2. Braille;

3. Electronic file on computer disk;

4. Audio-tape. [~~Sex Discrimination. EEOC "Guidelines on Sex Discrimination Because of Sex" is incorporated by reference. A copy may be inspected, copied, or obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~

~~Section 3. Employment Selection Procedure. EEOC "Uniform Guidelines on Employee Selection Procedure" is incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~

~~Section 4. National Origin Discrimination. EEOC "Guidelines on National Origin Discrimination" is incorporated by reference and may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: Kentucky employers and employees.

(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: Allows for consistent interpretation of statutes, federal regulations and court decisions.

(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 is no anticipated effect on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this regulation were made because of the GA changes to the Kentucky Civil Rights Act which includes persons with disabilities.

TIERING: Was tiering applied? No. Tiering was not applied because this regulation only promulgates guidelines to assist persons in complying with the Kentucky Civil Rights Act.

## GENERAL GOVERNMENT CABINET
## Department for Commission on Human Rights
## (Proposed Amendment)

**104 KAR 1:060. [~~Records and reports for~~] Multiple dwelling developments [~~and~~] reporting and recordkeeping requirements [~~form~~].**

RELATES TO: KRS [~~Chapter~~] 344.360

STATUTORY AUTHORITY: KRS 13A.100, 13A.120, 344.190(10), (11), 344.250(2), (7)

NECESSITY AND FUNCTION: This administrative regulation establishes [~~the~~] requirements for the retention, content [~~governing records~~] and submission of annual reports by owners of multiple dwelling developments covered by KRS 344.360.

Section 1. Definitions. (1) "Multiple dwelling development" means one (1) or more housing accommodations:

(a) [~~buildings Situated:~~

~~(a) At the same general location and either operated under one (1) management or with ownership in common; or~~

~~(b) Two (2) or more buildings~~] Located within the Commonwealth of Kentucky;

(b) Operated [~~if they are~~] under the same management or [~~are~~] owned by the same person or persons; and [~~.~~]

(c) Containing [~~The building(s) shall contain~~] in the aggregate at least twenty-five (25) units[~~;~~

~~(d) It shall include, but not be limited to, an apartment building, garden apartment, townhouse, or condominium~~].

(2) "Racial or national origin designation" means white, black, hispanic, American Indian or Alaskan native, biracial or multiracial, Asian or Pacific Islander [~~or other~~].

(3) "Leaseholder" means the party with whom the landlord has entered into an agreement for [~~the apartment~~] rental. [~~The agreement may be either oral or written. It shall include the name of the sublettee or assignee of the agreement if notice or approval of subletting or assignment is a condition of the agreement.~~

~~(4) "Apartment turnover" means a change of leaseholder or purchaser.~~]

(4) [~~(5)~~] "Applicant" means a [~~any~~] person who, for the purpose of either renting or purchasing a unit of [~~within~~] a multiple dwellings development, appears before either the owner, leasor, agent or other principal or operator.

Section 2. Persons Required to Report. (1) An [~~The~~] owner of a [~~any~~] multiple dwelling development [~~which has twenty five (25) or more units~~] shall file an annual report with the Kentucky Commission on Human Rights.

(2) The report shall contain [~~both~~] the racial, or national origin designation and familial status [~~composition~~] of each occupant of the multiple dwelling development.

(3) The report shall also include [~~including~~] factors affecting the multiple dwelling development's population of racial or national origin groups and persons in the category of familial status. [~~composition. Where there are multiple owners of a development and the development is operated as one (1) unit, a consolidated report may be filed.~~]

(4) A consolidated report may be filed if:

(a) There are multiple owners of a development; and

(b) The development is operated as one (1) unit.

(5) The manager, agent, or any other person responsible for management may file for the owner. [~~Reports for condominiums shall be filed by the development manager.~~]

[~~Section 3. Multiple Dwelling Report. The report shall be submitted on the "Multiple Dwelling Report" (February, 1992 edition) form incorporated by reference. This form may be obtained or copied at the Kentucky Commission on Human Rights, the Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. A "Suggested Form for Recording Applicant Information" is also incorporated by reference.~~]

Section 3. [~~4.~~] Filing of Reports. (1) One (1) copy of the "Multiple Dwelling Report" shall be filed annually with the Kentucky Commission on Human Rights by August 15 [~~July 1, of each year~~].

(2) The annual "Multiple Dwelling Report" shall include cumulative information for a period from July 1 to June 30 [~~of one (1) year prior to the month of filing. The commission may postpone or waive the filing of any required report~~].

Section 4. Instructions for Data Collecting on Race or National Origin. (1) The owner of a multiple dwelling development may list questions regarding the race or national origin of the applicant on the lease or application form, or on a separate form that refers to the application.

(2) The owner may ask for the information, but shall not require the applicant to provide it.

(3) If an applicant refuses to provide the information when the applicant applies in person, the applicant's refusal shall be noted on the form. The owner may supply the information based on visual observation or surname.

(4)(a) An applicant or tenant shall be informed that the Kentucky Commission on Human Rights is requesting information in order to monitor compliance with state statutes that prohibit persons from discriminating against tenants and applicants on the basis of race or national origin.

(b) An applicant or tenant shall be advised that if the information is not provided when the application is taken in person, the data will be collected on the basis of visual observation or surname.

(5) Questions shall not be asked of a telephone applicant.

(6) An effort to collect the data shall not be made upon receipt of an incomplete application by mail.

(7) The term "other" shall not be used if an opportunity is presented for visual observation.

Section 5. Maintenance and Retention of Records. The owner of the multiple dwelling development shall maintain the following records:

(1) Racial or national origin and familial status designation of each applicant for an apartment:

(2) [~~Racial designation of each new apartment leaseholder or purchaser;~~

~~(3)~~] Racial or national origin and familial status designation of each [~~new~~] leaseholder or purchaser;

(3) [~~(4)~~] Apartment rental or sales recruiting techniques ; and

(4) [~~(5)~~] All records shall be retained [~~kept on file~~] for a period of two (2) years and shall be available for inspection and review upon request by an employee of the Kentucky Commission on Human Rights, Monday through Friday between the hours of 8 a.m. and 4:30 p.m.

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Multiple Dwelling Reporting Form (February, 1993)";

(b) "Suggested Form for Recording Applicant Information (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 295-5566;

3. (502) 595-4024, extension 251, (TDD), for the hearing impaired.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: All persons who in the aggregate own housing accommodations with 25 or more units in Kentucky.

(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: Provides for uniformity in reporting.

(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: No anticipated effect on state and local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No administrative regulation or government policy either conflicts, overlaps or duplicates this regulation. Although the Kentucky Civil Rights Act covers any nonowner occupied resident, this regulation to reduce reporting requirement only covers owners of 25 or more units.
(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: Amendments to this statute were to clarify definition of multiple dwelling developments and to include changes by the 1992 General Assembly which included persons with families.
TIERING: Was tiering applied? Yes. Tiering was applied to reduce the number of entities required to report.

**GENERAL GOVERNMENT CABINET**
**Department for Commission on Human Rights**
**(Proposed Amendment)**

**104 KAR 1:070. Records and reports for apprenticeships and training programs.**

RELATES TO: KRS 344.070
STATUTORY AUTHORITY: KRS 13A.100, 344.250(3)
NECESSITY AND FUNCTION: This administrative regulation establishes the requirement governing the submission, retention, content, and substitution of records and reports by persons covered by KRS 344.250(3).

Section 1. Retention of Records. (1) An apprenticeship or training program shall keep [~~in chronological order for a period of two (2) years~~] a list of applicants according to race, national origin, [~~color,~~] sex and age.
(2) The list shall be maintained:
(a) In chronological order;
(b) For a period of two (2) years.
(3) Requests for reasonable accommodations by persons with disabilities shall also be maintained for two (2) years.

Section 2. Enrollment Records. (1) An apprenticeship or training program shall furnish to the commission, upon request a breakdown of current enrollment by race, national origin [~~color~~], sex and age.
(2) Requests for reasonable accommodations from persons with disabilities shall also be furnished upon request.

Section 3. Substitution of Records. [~~So as to avoid undue burdens on persons subject to this administrative regulation, an apprenticeship or training program may provide to the commission records and reports submitted in the regular course of business to other governmental agencies. However,~~] The commission may [~~reserves the right~~] when necessary for a complete investigation disallow substitution of [~~to require records in addition to~~] reports previously submitted to other governmental agencies.

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts
(1) Type and number of entities affected: All employers operating apprenticeship and training programs.
(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: Allows for more efficient recordkeeping for reports.
(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: No anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was addressed.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendments to this regulation were made as a result of changes in the Kentucky Civil Rights Act by the GA to cover the disabled.
TIERING: Was tiering applied? No. Tiering was not applied because all employers conducting apprenticeship and training programs are similarly affected. All employers subject to this administrative regulation must be treated equally. To differentiate would be a violation of equal protection and due process.

**FINANCE AND ADMINISTRATION CABINET**
**Kentucky Retirement Systems**
**(Proposed Amendment)**

**105 KAR 1:120. Participation of agencies.**

RELATES TO: KRS 78.530 through 78.532, 78.535
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for participa-

tion of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which the employer purchases service credit for its employees by paying the actuarial cost of the service in a lump sum or by annual installments.

(2) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. Before an agency may participate in CERS, the retirement system shall determine that it meets the definition of county in KRS 78.510 and that the agency is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 29 USC 1002(32).

Section 3. For participation under the alternate plan, the agency shall request an actuarial study through the retirement system to determine the cost of purchasing past service for all eligible employees at least ninety (90) days prior to the agency's desired participation date. The agency shall provide the information required by the actuary in writing or in the form of compatible magnetic media and shall pay the cost of the study and any revisions to the study to the actuary.

Section 4. The agency shall adopt an appropriate order that shall establish a participation date and the method of participation. The participation date shall be the first day of any month on or following the date the order is adopted and the method of participation shall be the alternate plan or the standard plan.

Section 5. The agency shall designate an individual to be responsible for reporting wages and employer and employee contributions to the retirement system. The retirement system shall provide forms, instruction and information concerning retirement statutes and regulations to the individual.

Section 6. The board shall review the agency's participation request at the first quarterly board meeting after the agency has reported contributions for a trial period of three (3) or more months. The board may deny participation if the agency fails to comply with retirement statutes governing participation of employees and reporting of contributions during the trial period. The board may deny participation by the agency if fewer than fifty (50) percent of its employees elect to participate in CERS. If the agency is phasing out another retirement plan or if the agency can provide justification for a lower election rate by its employees, the board may allow participation by an agency with fewer than fifty (50) percent of its employees electing to participate in CERS. The board may deny participation if the agency's participation will have an impact on the tax qualification of the system, a significant impact on the actuarial soundness of the system or other adverse impact which the board determines is not in the best interest of the members and beneficiaries of the system. If the board denies the agency's participation request, the contributions paid to the retirement system during the trial period shall be refunded to the employer and its employees.

Section 7. The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: January 23, 1993

FILED WITH LRC: January 29, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1993 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1993, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment only applies to local government agencies which are seeking to participate in the County Employees Retirement System.

(a) Direct and indirect costs or savings to those affected: No cost is associated with this administrative regulation.

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No increase in paperwork.

(2) Effects on the promulgating administrative body: No cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on local revenues.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This proposed amendment specifies additional conditions to be considered by the Board of Trustees in reviewing requests of agencies for participation in the systems.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This administrative regulation provides all local government agencies with the same criteria for acceptance and participation in the County Employees Retirement System.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to the participation of local government entities in the County

Employees Retirement System.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation provides procedures for participation and sets out the primary conditions under which participation may be denied.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation does not impact the revenues of local government.

**GENERAL GOVERNMENT CABINET**
**Kentucky Board of Respiratory Care**
**(Proposed Amendment)**

**201 KAR 29:050. Continuing education requirements.**

RELATES TO: KRS 314A.115

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: This regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. Accrual of Continuing Education Hours Mandatory; Computation of Accrual. A minimum of twenty-four (24) continuing education hours shall be accrued by each person holding mandatory certification during the two (2) year certification period for renewal, except that those persons holding mandatory certification which is due to be renewed in January of 1994 [~~1995~~], shall receive twelve (12) continuing education hours for this renewal period only. All persons holding mandatory certification shall receive twenty-four (24) continuing education hours for each renewal thereafter. The certification period shall be January I of one year through December 31 of the following calendar year. All hours must be in or related to the field of respiratory care.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory certificate shall be directly related to the professional growth and development of the respiratory care practitioner. They may be earned by completing any of the following educational activities:

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

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

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

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

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

(b) Kentucky Board of Nursing (KBN);

(c) American Heart Association (AHA);

(d) American Medical Association (AMA); or

(e) American Cancer Society.

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

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

Section 4. Procedures for Accreditation of Sponsors and Approval of Continuing Education Activities. Any entity desiring to establish accreditation of a continuing education offering prior to attendance shall apply for approval to the board at least forty-five (45) days in advance of the commencement of the offering, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, and the number of continuing education hours offered. A continuing education activity shall be qualified for approval if the board determines that the activity being presented:

(1) Is an organized program of learning; and

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

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

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

Section 5. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each

person holding mandatory certification shall:

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

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

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

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

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

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

Section 7. Board to Approve Continuing Education Hours; Appeal when Approval Denied.

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

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

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

JOSEPH RAVENCRAFT, Chairman

APPROVED BY AGENCY: January 28, 1993

FILED WITH LRC: February 11, 1993 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 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 attending this meeting must notify this agency in writing by March 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 1,962 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There will be small costs to certificate holders receiving continuing education.

1. First year: Certificate holders may incur small costs to receive continuing education.

2. Continuing costs or savings: Certificate holders 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: Certificate holders may be required to report CE hours every 2 years.

(2) Effects on the promulgating administrative body: This amendment corrects an error made in the original regulation setting 1995 instead of 1994 as the first year where CE is required

(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: Certificate holders may be required to report CE hours every 2 years.

(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.

## JUSTICE CABINET
## Department of Corrections
## (Proposed Amendment)

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

RELATES TO: KRS 196.710

STATUTORY AUTHORITY: KRS 196.710

NECESSITY AND FUNCTION: This administrative regulation is necessary to provide the application process and administrative procedures for the community corrections grant programs enacted by the General Assembly in KRS 196.710.

Section 1. Application Process. The director shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by mailing notices to each county government and judicial district.

Section 2. Eligibility Requirements. (1) The following programs are eligible for funding pursuant to KRS 196.705:

(a) Victim restitution;

(b) Community service work;

(c) Home confinement;

(d) Electronic monitoring;

(e) Drug and alcohol counseling program;

(f) Day reporting centers; and

(g) Other programs that are for a purpose outlined in KRS 196.705.

(2) Eligible applicants may apply for a grant to implement a program plan in a judicial district. Prior to submitting a program plan, the board shall approve the application which shall include:

(a) Project overview containing a description of the cities and counties to be served and the general format of the programs;

(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit;

(c) A projected budget detailing the manner in which the funds shall be expended;

(d) Any local funds or contributions allocated to the development and implementation of the program plan;

(e) All of these topics are contained in the form entitled "Kentucky Community Corrections Act Grant Application" which is hereby incorporated by reference. The "Kentucky Community Corrections Act Grant Application" is available for inspection and copying at the Division of Administrative Services, Kentucky Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Section 3. Department Assistance. The department shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the department.

Section 4. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. Such funds shall not be used to supplant funds previously committed to said programs and services by local or state government.

(1) Grant funds shall not be used for jail operations or the renovation or construction of facilities or the acquisition of land.

(2) Grant funds shall be disbursed on a quarterly basis but the board shall not spend any funds unless services have been rendered ~~[upon receipt of monthly reports of actual expenditures incurred]~~.

Section 5. Award Procedure. (1) The director shall forward copies of the grant application form hereby incorporated by reference to members of the commission who shall vote on the applications within sixty (60) days of the final deadline. The commission shall make their decision based on priorities established by the commission. The director shall notify the recipient(s) of the grant(s) award(s) within two (2) weeks of the decision.

(2) Grants shall be made on a year-to-year basis with consideration for continued funding until June 30, 1994 after review of submitted progress reports and audit reports. No continuation funding shall be provided to a program which has failed to reduce prison commitments.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 4, 1993

FILED WITH LRC: February 4, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 29, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Director, Division of Administrative Services, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the commission.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or 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.

## JUSTICE CABINET
## Department of Corrections
## (Proposed Amendment)

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

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised January 15,

1993 [~~November 17, 1992~~], are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

| | |
|---|---|
| 1.1 | Legal Assistance for Corrections Staff |
| 1.2 | News Media |
| 01-04-01 | The operation of Contracted Adult Correctional Facilities |
| 1.6 | Extraordinary Occurrence Reports |
| 1.9 | Institutional Duty Officer |
| 1.11 | Population Counts and Reporting Procedures |
| 1.12 | Operation of Motor Vehicles by Department of Corrections Employees |
| 2.1 | Inmate Canteen |
| 2.2 | Warden's Fund |
| 2.10 | Surplus Property |
| 03-01-01 | Code of Ethics |
| 3.12 | Institutional Staff Housing |
| 4.2 | Staff Training and Development |
| 4.3 | Firearms and Chemical Agents Training |
| 6.1 | Open Records Law |
| 7.2 | Asbestos Abatement |
| 8.1 | Occupational Exposure to Bloodborne Pathogens (Added 1/15/93) |
| 8.4 | Emergency Preparedness |
| 9.1 | Use of Force |
| 9.4 | Transportation of Inmates to Funerals or Bedside Visits |
| 9.6 | Contraband |
| 9.7 | Storage, Issue and Use of Weapons Including Chemical Agents |
| 9.8 | Search Policy |
| 9.9 | Transportation of Inmates |
| 9.10 | Security Inspections |
| 9.11 | Tool Control |
| 9.18 | Informants |
| 9.19 | Found Lost or Abandoned Property |
| 10.2 | Special Management Inmates |
| 10.3 | Safekeepers |
| 10.4 | Special Needs Inmates |
| 11.2 | Nutritional Adequacy of the Diet for Inmates |
| 11.3 | Special Diet Procedures |
| 13.1 | Pharmacy Policy and Formulary |
| 13.2 | Health Maintenance Services |
| 13.3 | Medical Alert System |
| 13.4 | Health Program Audits |
| 13.5 | Acquired Immune Deficiency Syndrome |
| 13.6 | Sex Offender Treatment Program |
| 13.9 | Dental Services |
| 14.2 | Personal Hygiene Items |
| 14.3 | Marriage of Inmates |
| 14-04-01 | Legal Services Program |
| 14.6 | Inmate Grievance Procedures |
| 15.1 | Hair and Grooming Standards |
| 15.2 | Offenses and Penalties |
| 15.3 | Meritorious Good Time |
| 15-05-01 | Restoration of Forfeited Good Time |
| 15.6 | Adjustment Procedures and Programs |
| 15.7 | Inmate Account Restriction |
| 16.1 | Inmate Visits |
| 16.2 | Inmate Correspondence |
| 16.3 | Telephone Calls |
| 16.4 | Inmate Packages |
| 17-01-01 | Inmate Personal Property |
| 17.2 | Assessment Center Operations |
| 17.3 | Controlled Intake of Inmates |
| 18.4 | Classification of the Inmate |
| 18.5 | Custody/Security Guidelines |
| 18.6 | Classification Document |
| 18.7 | Transfers |
| 18.8 | Guidelines for Transfers Between Institutions |
| 18.9 | Out-of-state Transfers |
| 18-10-01 | Preparole Progress Reports |
| 18.11 | Kentucky Correctional Psychiatric Center Transfer Procedures |
| 18.12 | Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill |
| 18.13 | Population Categories |
| 18.15 | Protective Custody |
| 19.1 | Government Services Projects |
| 19.2 | Community Services Projects |
| 19.3 | Inmate Wage Program [~~(Added 11/17/92)~~] |
| 20-01-01 | Educational Programs |
| 22.1 | Privilege Trips |
| 25.1 | Gratuities |
| 25.2 | Public Official Notification of Release of an Inmate |
| 25.3 | Prerelease Program |
| 25.4 | Inmate Furloughs |
| 25.6 | Community Center Program |
| 25.7 | Expedient Release |
| 25.8 | Extended Furloughs |
| 25.10 | Administrative Release of Inmates |
| 27-01-01 | Probation and Parole Procedures |
| 27-02-01 | Duties of Probation and Parole Officers |
| 27-03-01 | Workload Formula Supervisor/Staff Ratio |
| 27-05-01 | Testimony, Court Demeanor and Availability of Legal Services |
| 27-06-01 | Availability of Supervision Services |
| 27-06-02 | Equal Access to Services |
| 27-07-01 | Cooperation with Law Enforcement Agencies |
| 27-08-01 | Use of Force |
| 27-09-01 | Kentucky Community Resources Directory |
| 27-10-01 | Advanced Supervision |
| 27-11-01 | Intensive Supervision |
| 27-12-01 | Supervision: Case Classification |
| 27-12-02 | Risk/Needs Assessment |
| 27-12-03 | Initial Interview |
| 27-12-04 | Conditions of Regular Supervision/Request for Modification |
| 27-12-05 | Releasee's Report |
| 27-12-06 | Grievance Procedures for Offenders |
| 27-12-07 | Employment, Education/Vocational Referral |
| 27-12-08 | Supervision Plan |
| 27-12-09 | Casebook |
| 27-12-10 | Guidelines for Monitoring Supervision Fee |
| 27-12-11 | Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority |
| 27-12-12 | Other Financial Obligations (Not Ordered by Releasing Authority) |
| 27-12-13 | Community Service Work |
| 27-12-14 | Client Travel Restrictions |
| 27-13-02 | Alcohol Detection |
| 27-14-01 | Interstate Compact Transfers |
| 27-14-02 | Interstate Compact Out-of-state Probation and Parole Violation |
| 27-15-01 | Supervision Report; Violations, Unusual Incidents |
| 27-16-01 | Search; Seizure; Chain of Custody; Disposal of Evidence |
| 27-17-01 | Absconder Procedures |
| 27-18-01 | Probation and Parole Issuance of Detainer/Warrant |
| 27-19-01 | Preliminary Revocation Hearing |
| 27-20-01 | Division of Probation and Parole Controlled Intake Program |
| 27-20-02 | Prisoner Intake Notification |

27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Fur+lough/ Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: January 15, 1993
FILED WITH LRC: January 15, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 26, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

## 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 February 12, 1993 [~~January 15, 1993~~], are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log

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| KSR 05-00-02 | Research Activities |
| KSR 05-00-03 | Management Information Systems |
| KSR 06-00-01 | Inmate Master File |
| KSR 06-00-02 | Records Audit |
| KSR 06-00-03 | Kentucky Open Records Law and Release of Psychological/ Psychiatric Information |
| KSR 07-00-02 | Institutional Tower Room Regulations |
| KSR 07-00-04 | Handling of PCB Articles and Containers |
| KSR 07-00-05 | Proper Removal of Transformers |
| KSR 07-00-06 | Asbestos Abatement |
| KSR 07-00-07 | Discharge Monitoring Report (DMR) |
| KSR 07-00-08 | Control of Hazardous Energy (Lockout or Tagout) |
| KSR 07-00-09 | Inventory Control of Underground Storage Tanks |
| KSR 08-00-07 | Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family |
| KSR 08-00-08 | Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery |
| KSR 08-00-10 | Hazardous Chemicals and Material Safety Data Sheet |
| KSR 09-00-04 | Horizontal Gates/Box 1 Entry and Exit Procedure |
| KSR 09-00-05 | Gate I Entrance and Exit Procedure |
| KSR 09-00-09 | Contraband, Dangerous Contraband and Search Policy |
| KSR 09-00-21 | 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 |
| KRS 10-02-04 | Unit E-General Operating Procedures |
| KSR 11-00-01 | Meal Planning for the General Population |
| KSR 11-00-02 | Special Diets |
| KSR 11-00-03 | Food Service Inspections |
| KSR 11-00-04 | Dining Room Rules and Dress Code for Inmates |
| KSR 11-00-06 | Health Standards/Regulations for Food Service Employees |
| KSR 11-00-07 | Early Chow Line Passes for Medically Designated Inmates |
| KSR 12-00-01 | Inmate Summer Dress Regulations |
| KSR 12-00-03 | State Items Issued to Inmates |
| KSR 12-00-07 | Regulations for Inmate Barbershop |
| KSR 12-00-09 | Treatment of Inmates with Body Lice |
| KSR 13-00-02 | Hospital Operations, Rules and Regulations |
| KSR 13-00-03 | Medication for Inmates Leaving Institution Grounds |
| KSR 13-00-04 | Medical and Dental Care |
| KSR 13-00-05 | Medical Records |
| KSR 13-00-08 | Institutional Laboratory Procedures |
| KSR 13-00-09 | Institutional Pharmacy Procedures (Amended 2/12/93) |
| KSR 13-00-10 | Requirements for Medical Personnel |
| KSR 13-00-11 | Health Evaluation |
| KSR 13-00-12 | Vision Care/Optometry Services |
| KSR 13-00-14 | Periodic Health Examinations for Inmates |
| KSR 13-00-15 | Medical Alert System |
| KSR 13-00-16 | Suicide Prevention and Intervention Program |
| KSR 13-00-17 | Special Care |
| KSR 13-02-01 | Mental Health Services |
| KSR 13-02-02 | Mentally Retarded Inmates |
| KSR 13-02-03 | Suicide Prevention and Intervention Program |
| KSR 13-02-04 | Division of Mental Health's Residential Services |
| KSR 14-00-01 | Inmate Rights |
| KSR 14-00-04 | Inmate Grievance Procedure |
| KSR 15-00-02 | Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s) |
| KSR 15-00-05 | Differential Status for SU (QUIT) Inmates |
| KSR 15-00-06 | Inmate I.D. Cards |
| KSR 15-00-07 | Inmate Rules and Discipline - Adjustment Committee Procedures |
| KSR 15-00-08 | Firehouse Living Area |
| KSR 15-00-10 | Program Services for Special Housing Placement |
| 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 Residents Adjudicated Guilty but Mentally Ill |
| KSR 18-00-06 | Classification and Special Notice Form |
| KSR 18-00-07 | Kentucky State Reformatory Placement Committee |
| KSR 19-00-01 | Inmate Work Incentives |
| KSR 19-00-02 | On-the-job Training Program |
| KSR 19-00-03 | Safety Inspections of Inmate Work Assignment Locations |
| KSR 19-00-05 | Food Service On-The-Job Training and Workers Rules |
| KSR 20-00-01 | Technical and Adult Basic Level Learning Center Programs |

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| KSR 20-00-04 | Criteria for Participation in A College Program |
| KSR 21-00-01 | Legal Aide Office and Inmate Law Library Services and Supervision |
| KSR 21-00-02 | Inmate Library Services |
| KSR 21-00-03 | Library Services for Unit D |
| KSR 22-00-03 | Inmate Organizations |
| KSR 22-00-07 | Inmate Magazine |
| KSR 23-00-02 | Chaplain's Responsibility and Inmate Access to Religious Representatives |
| KSR 23-00-03 | Religious Programming |
| KSR 25-00-01 | Discharge of Inmates to Hospital or Nursing Home |
| KSR 25-00-02 | Violations of Law or Code of Conduct by Inmates on Parole Furlough |
| KSR 25-00-03 | Preparole Progress Report |

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 12, 1993

FILED WITH LRC: February 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 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: 523 employees of the Kentucky State Reformatory, 1403 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**DEPARTMENT OF CORRECTIONS**
**(Proposed Amendment)**

**501 KAR 6:040. Kentucky State Penitentiary.**

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections, the following policies and procedures, revised February 12, 1993 [~~August 14, 1992~~] are incorporated by reference and shall be referred to as Kentucky State Penitentiary 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.

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| KSP 000000-06 | Administrative Regulations |
| KSP 010000-04 | Public Information and Media Communication |
| KSP 020000-15 | Legal Assistance |
| KSP 02-01-01 | Inmate Commissary Program |
| KSP 02-08-01 | Inventory Records and Control [~~(Added 8-14-92)~~] |
| KSP 02-12-01 | Inmate Personal Funds |
| KSP 030000-04 | Requisition and Purchase of Supplies and Equipment |
| KSP 040000-01 | Management Information System |
| KSP 040000-02 | Inmate Records |
| KSP 060000-01 | Special Security Unit |
| KSP 060000-02 | Special Management Units: Assignment, Classification Review and Release |
| KSP 060000-04 | Protective Custody Unit |
| KSP 070000-20 | Menu Preparation and Planning |
| KSP 070000-24 | Food Service, General Sanitation, Safety, and Protection Standards and Requirements |
| KSP 070000-25 | Food Service Inspections |
| KSP 070000-30 | Therapeutic Diets |
| KSP 090000-01 | Inmate Work Programs/Safety Inspections of Inmate Work Locations |
| KSP 09-08-01 | Searches and Preservation of Evidence |
| KSP 100000-03 | Disposition of Unauthorized Property |
| KSP 100000-05 | Procedures for Providing Clothing, Linens and Other Personal Items |
| [~~KSP 100000-06~~ | ~~Inmate Mail and Packages (Deleted 2/12/93)~~] |
| KSP 100000-08 | Behavioral Counseling Record |
| KSP 100000-14 | Property Room: Clothing Storage and Inventory |
| KSP 100000-15 | Uniform Cell Standards for Fire Safety, Sanitation and Security |
| KSP 100000-18 | Inmate Grievance Committee Hearings |
| KSP 100000-20 | Legal Services Program |
| KSP 100000-21 | Photocopies for Nonindigent Inmates with Special Court Deadlines |
| KSP 110000-04 | Preparole Progress Report |
| KSP 110000-06 | General Guidelines of the Classification Committee |
| KSP 110000-07 | Statutory Good Time Restoration |
| KSP 110000-10 | Special Needs Inmates |
| KSP 110000-12 | Unit Classification Committee - Inmate Work Assignments |

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| KSP 110000-13 | Classification Document |
| KSP 110000-15 | Transfers to Kentucky Correctional Psychiatric Center (KCPC) |
| KSP 110000-16 | Consideration of Further Treatment Requirements for Inmates Prior to Release |
| KSP 110000-18 | Functions of the Classification Committee |
| KSP 120000-07 | Community Center Program |
| KSP 120000-08 | Inmate Furloughs |
| KSP 120000-11 | Religious Services - Staffing |
| KSP 120000-18 | Religious Services - Religious Programming |
| KSP 120000-20 | Marriage of Inmates |
| KSP 120000-31 | Extended Furloughs |
| KSP 13-01-01 | Pharmacy Procedures |
| KSP 13-02-01 | Hospital Services |
| KSP 13-02-02 | Sick Call |
| KSP 13-02-03 | Health Evaluations |
| KSP 13-02-04 | Emergency Medical Procedure |
| KSP 13-02-05 | Consultations |
| KSP 13-02-08 | Medical Records |
| KSP 13-02-09 | Psychiatric and Psychological Services |
| KSP 13-02-12 | Dental Services for Special Management Units |
| KSP 13-02-13 | Optometric Services |
| KSP 130000-10 | Execution Plan |
| KSP 15-01-01 | Inmate Grooming and Dress Code |
| KSP 15-03-01 | Award of Meritorious Good Time [~~(Added 8-14-92)~~] |
| KSP 15-06-01 | Due Process/Disciplinary Procedures [~~(Added 8-14-92)~~] |
| KSP 15-10-01 | Discharge of Inmates by Shock Probation [~~(Added 8-14-92)~~] |
| KSP 16-01-01 | Visiting Program |
| KSP 16-02-01 | Inmate Correspondence (Added 2/12/93) |
| KSP 16-03-02 | Inmate Telephone Access |
| KSP 17-01-01 | Inmate Personal Property |
| KSP 19-05-01 | Correctional Industries |
| KSP 20-04-01 | Educational Programs |

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 12, 1993

FILED WITH LRC: February 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 22, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron 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: 318 employees of the Kentucky State Penitentiary, 797 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## DEPARTMENT OF CORRECTIONS
## (Proposed Amendment)

### 501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner 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 February 12, 1993 [~~September 15, 1992~~], are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

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| NTC 01-05-01 | Extraordinary Occurrence Reports (Amended 2/12/93) |
| NTC 01-10-01 | Legal Assistance for Staff (Amended 2/12/93) |
| NTC 01-11-01 | Political Activities of Merit Employees |
| NTC 01-15-01 | Establishment of the Warden as Chief Executive Officer |
| NTC 01-17-01 | Relationships with Public, Media and Other Agencies |
| NTC 02-02-02 | Warden's Participation in the Agency Budgeting Process |
| NTC 02-03-01 | Fiscal Management: Audits |
| NTC 02-04-01 | Internal Control and Monitoring of Accounting Procedures |
| NTC 02-07-02 | Chapel Fund |
| NTC 02-08-01 | Inmate Canteen (Amended 2/12/93) |
| NTC 02-10-01 | Insurance Coverage |
| NTC 02-12-01 | Inmate [~~Personal~~] Accounts (Amended 2/12/93) |
| NTC 04-01-01 | Training and Staff Development |
| NTC 04-04-01 | Firearms and Chemical Agents Training |
| NTC 06-01-01 | Offender Records |
| NTC 06-01-02 | Records - Release of Information |
| NTC 06-01-03 | Taking Offender Record Folders onto the Yard |

NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Unit
NTC 10-02-01 Protective Custody Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-01-05 State Issue and Required Inmate Clothing
NTC 17-03-01 Assessment/Orientation
NTC 18-01-01 Preparole Progress Report
NTC 18-02-01 Classification
NTC 18-02-02 Classification - 48 Hour Notification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers of Inmates
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment
NTC 19-02-01 Correctional Industries
NTC 19-02-02 Guidelines for Correctional Industries
NTC 20-01-01 Educational Programs (Amended 2/12/93) [~~Academic School Program~~]
[~~NTC 20-02-01 Vocational School (Deleted 2/12/93)~~]
NTC 20-02-02 Live Work Projects in Vocational School Classes
NTC 21-01-01 Library Services
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs [~~(Amended 9/15/92)~~]
NTC 23-01-01 Religious Services [~~(Amended 9/15/92)~~]
NTC 23-03-01 Marriage of Inmates [~~(Amended 9/15/92)~~]
NTC 24-04-01 Honor Status [~~(Amended 9/15/92)~~]
NTC 24-05-01 Unit Management [~~(Amended 9/15/92)~~]
NTC 25-01-01 Release Preparation Program [~~(Amended 9/15/92)~~]
NTC 25-01-02 Temporary Release/Community Center Release [~~(Amended 9/15/92)~~]
NTC 25-01-03 Graduated Release [~~(Amended 9/15/92)~~]
NTC 25-02-01 Funeral Trips and Bedside Visits [~~(Amended 9/15/92)~~]
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program [~~(Amended 9/15/92)~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 12, 1993
FILED WITH LRC: February 12, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 22, 1993, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 283 employees of the Northpoint Training Center, 920 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives

were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## DEPARTMENT OF CORRECTIONS
## (Proposed Amendment)

### 501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised February 12, 1993 [~~November 13, 1992~~] are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

| | |
|---|---|
| WKCC 02-01-01 | Inmate Funds |
| WKCC 02-01-02 | Inmate Canteen |
| WKCC 02-00-03 | Invoice and Voucher Processing |
| WKCC 02-00-04 | Monetary Receipts During Nonbusiness Hours |
| WKCC 02-00-06 | Purchasing Procedures |
| WKCC 02-01-01 | Inmate Funds |
| WKCC 02-02-01 | Agency Funds and Accounting Procedures |
| WKCC 02-08-01 | Property Receipt and Inventory Procedures |
| WKCC 04-01-01 | Travel Reimbursement for Official Business in Attendance at Professional Meetings |
| WKCC 04-02-01 | Employee Training and Development |
| WKCC 04-04-01 | Educational Assistance Program |
| WKCC 05-01-01 | Research, Consultants, and Student Interns |
| WKCC 06-00-01 | Offender Records and Information Access |
| WKCC 06-00-02 | Court Orders, Orders of Appearance, Warrants, Detainers, Etc. |
| WKCC 09-00-01 | Drug Abuse and Alcohol Testing |
| WKCC 10-02-01 | Special Management Inmates (Amended 2/12/93) |
| WKCC 11-00-02 | Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements |
| WKCC 11-00-03 | Food Service Inspections, Sanitation, Purchasing, and Storage of Food |
| WKCC 11-00-04 | Food Service Security |
| WKCC 11-00-05 | Food Service General Guidelines |
| WKCC 11-03-01 | Food Service Meals, Menus, Nutrition and Special Diets |
| WKCC 12-01-01 | Inmate Clothing |
| WKCC 13-00-01 | Special Health Programs |
| WKCC 13-01-01 | Use of Pharmaceutical Products |
| WKCC 13-02-01 | Health Care Services (Amended 2/12/93) |
| WKCC 14-04-01 | Legal Services Program |
| WKCC 14-06-01 | Inmate Grievance Procedure |
| WKCC 15-01-01 | Hair and Grooming Standards |
| [~~WKCC 15-02-01~~ | ~~Inmate Offenses and Penalties (Deleted 2/12/93)~~] |
| WKCC 15-03-01 | Meritorious Good Time |
| WKCC 15-05-01 | Restoration of Forfeited Good Time |
| WKCC 16-01-01 | Visiting Policy and Procedures [(~~Amended 11/13/92~~)] |
| WKCC 16-02-01 | Inmate Correspondence [(~~Amended 11/13/92~~)] |
| WKCC 16-03-01 | Inmate Access to Telephones |
| WKCC 16-04-01 | Inmate Packages |
| WKCC 17-01-01 | Inmate Personal Property |
| WKCC 17-02-01 | Inmate Reception and Orientation |
| WKCC 18-01-01 | Structure, Guidelines, and Functions of the Classification Committee (Amended 2/12/93) |
| WKCC 20-01-01 | Education Program |
| WKCC 22-00-01 | Inmate Recreation and Leisure Time Activities |
| WKCC 22-00-02 | Inmate Clubs and Organizations |
| WKCC 23-00-01 | Religious Services |
| WKCC 25-02-01 | Inmate Release Process |
| WKCC 25-03-01 | Prerelease Programs |

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 12, 1993

FILED WITH LRC: February 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 146 employees of the Western Kentucky Correctional Complex, 410 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Division of Building Codes Enforcement**
**(Proposed Amendment)**

**815 KAR 7:010. Administration and enforcement.**

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is directed [~~required~~] by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code[~~, and parts thereof,~~] which shall establish standards for construction of all buildings in the state. This administrative regulation establishes the administration and enforcement sections of the Kentucky Building Code. This administrative regulation shall replace Article 1 of the BOCA National Building Code/1990 as adopted in 815 KAR 7:025. This amendment is necessary to clarify for building inspectors that they apply the proper code edition when making inspections and changes to satisfy KRS Chapter 13A requirements. [~~This amendment is necessary to clarify or relocate various provisions of the code, most importantly including a statement of records retention requirements and the effect of installation of fire walls in buildings.~~]

Section 1. Definitions Used in Title 815, Chapter 7. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators International, Inc.

(3) "Building " as defined by KRS 198B.010(4).

(4) "Building code official" means an inspector certified by the department in accordance with 815 KAR 7:070 and designated by the department or by a local government as an enforcement official for the Kentucky Building Code pursuant to KRS Chapter 198B.

(5) "Commissioner" as defined by KRS 198B.010(11).

(6) "Department" as defined by KRS 198B.010(13).

(7) "Fire code official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in Title 815, Chapter 10 of the Kentucky Administrative Regulations.

(8) "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and shall apply to buildings [~~applies to a building~~] of any size or [~~for any~~] use, all or any component parts of which are of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(9) "KAR" means Kentucky Administrative Regulations.

(10) "KBC" means the Kentucky Building Code as established in this chapter.

(11) "KRS" means Kentucky Revised Statutes.

(12) "Kentucky Standards of Safety" means the Kentucky administrative regulations established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(13) "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

(14) "Ordinary repair" as defined by KRS 198B.010(21).

(15) "Person" means a person, partnership, corporation or other legal entity.

(16) "Single family dwelling" means a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall [~~is~~] not be connected to any other unit or building.

(17) "Trade-name or brand-name house" means a [~~any~~] single structure made of precut or prefabricated panels, sections or individual pieces which are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure that the manufacturer makes, and which are assembled on a permanent foundation by conventional home-building and electrical and plumbing installation techniques.

Section 2. Scope. This administrative regulation shall supersede [~~any and~~] all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) General. The provisions of this administrative regulation shall apply to the following:

(a) The construction, alteration, equipment, use and occupancy of buildings and structures;

(b) Additions to buildings and structures; and

(c) Appurtenances to buildings and structures;

whether hereafter erected or, where expressly stated in this regulation, existing; and whether on land, over water, or on water, permanently moored to land, and substantially a land structure.

(2) Prefabricated components. Trade-name or brand-name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) Single-family dwellings. The provisions of the KBC relating to single-family dwellings that are not trade-name or brand-name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. [~~However,~~] The state plumbing code and the national electrical code shall be applicable to single-family dwellings [~~these units,~~] whether or not the local government passes an ordinance. A local government shall not enforce any building code other than the KBC on single-family dwellings [~~such units~~].

(4) Application of references. [~~Unless otherwise specifically provided for within the KBC,~~] All references to articles, [~~or~~] section numbers, or [~~to~~] provisions not specifically identified by number, shall [~~be construed to~~] refer to the [~~such~~] article, section or provision of the KBC.

(5) Exemptions. The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when the buildings are judged by the code official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration and relocation. The code official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to this determination.

(6) Code remedial. The KBC's [~~shall be construed to secure its expressed~~] intent shall be [~~which is~~] to secure public safety, health and welfare [~~insofar as they are~~] affected by building construction quality, adequate means of egress, light and ventilation, electrical systems, plumbing, energy, boiler safety, persons with physical disabilities [~~handicapped accessibility~~], life safety from hazards of fire and explosion and other disasters. It shall also be the [~~is the further expressed~~] intent of this code to avoid duplicative plan review and inspection of new construction and to maintain [~~gather together in~~] one (1) set of administrative regulations with [~~all~~] the requirements relating to the construction of buildings in the state to enable builders, owners and code officials to be adequately informed.

(7) Other regulations. Other local or state law shall [~~must~~] be consulted to determine the existence of other powers given to the code official, such as those related to demolition or authority over unsafe structures, which are not specifically addressed [~~awarded~~] in this administrative regulation.

(8) Fire safety authority. The State Fire Marshal and the local fire code official shall continue to be the authority having jurisdiction for enforcement of the Kentucky Standards of Safety (Fire Prevention Code) in existing buildings not regulated by this code, and for continued fire safety maintenance in buildings constructed and approved under this administrative regulation.

Section 3. Applicability. (1) General. The provisions of the KBC shall apply to all matters affecting or relating to buildings and structures [~~as~~] set forth in this administrative regulation.

(2) Exemptions. A [~~No~~] person shall not construct a building or structure, extend, repair, remove or alter a building or structure in violation of these provisions, except for ordinary repairs as outlined in Section 4 of this administrative regulation. The [~~and except further that the~~] raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted if [~~provided~~] the building or structure has not been [~~is not otherwise~~] altered or its use or occupancy changed.

(3) Alternative regulations. A [~~Any requirement essential for~~] structural, fire or sanitary safety [~~of a~~] building requirement necessary [~~which is essential~~] for the safety of the occupants [~~thereof,~~] and which is not specifically covered by this code, shall be determined by other administrative regulations of the department or other applicable law.

(4) Violation. A [~~Any~~] person who violates a [~~any~~] provision of this administrative regulation or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this administrative regulation.

(5) Referenced standards. The standards referenced in this code and listed in Appendix A shall be considered part of the requirements of this code to the prescribed extent of each reference. If [~~Where~~] differences occur between provisions of this code and referenced standards, the provisions of this code shall apply.

Section 4. Ordinary Repairs and Maintenance. (1) Repairs. Ordinary repairs to structures may be made without application or notice to the code official. Ordinary [~~, but the~~] repairs shall not include:

(a) The cutting away of any wall or [~~,~~] partition; or [~~portion thereof,~~]

(b) The removal or cutting of any structural beam or bearing support; or

(c) The removal or change of any required means of egress; or

(d) Rearrangement of parts of a structure affecting the exit requirements; or [~~nor shall ordinary repairs include~~]

(e) Activities excluded by KRS 198B.010(21).

(2) Maintenance. All buildings and structures [~~and all parts thereof~~], both existing and new, shall be maintained in a safe and sanitary condition. [~~All~~] Service equipment, means of egress, devices and safeguards which are required by this code in a building or structure, new or existing, [~~or which were required by a previous code in a building or structure, when erected, altered or repaired,~~] shall be maintained in good working order.

(3) Owner responsibility. The owner or the owner's designated agent shall be responsible for the safe and sanitary maintenance of the building or structure and its means of egress facilities at all times.

(4) Housekeeping inspections. Periodic inspections of existing uses and occupancies shall be made by the appropriate fire code and health officials to insure maintenance of equipment and good housekeeping conditions.

Section 5. Installation of Service Equipment; Unlawful Use. If [~~When~~] the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment are [~~is specifically~~] controlled by the provisions of this code, it shall be unlawful to use this equipment until a certificate of approval has been issued by the code official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use. The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been [~~heretofore~~] approved, may be continued without change, except as is specifically covered in this code and deemed necessary by the code official for the general safety and welfare of the occupants and the public, or as may be required by the Kentucky Standards of Safety (Fire Prevention Code) or an existing structures code adopted by local ordinance. Application of this code to existing buildings shall not apply unless alterations, additions or changes in use as set forth in subsections (2) through (5) of this section are proposed or occur.

(2) Change in use. It shall be unlawful to make a [~~any~~] change in the use of a [~~any~~] structure which creates [~~, or portion thereof, with~~] the potential of [~~to cause~~] a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without approval of the building code official. If the building code official determines that the structure meets the intent of the provisions of the code governing building construction for the proposed new use and occupancy and the proposed change shall [~~does~~] not result in any greater hazard to public safety or welfare, the building code official shall approve the change. In making this decision, the building code official may require a written opinion from a design professional.

(3) Additions, alterations or repairs. Additions, alterations or repairs may be made to a [~~any~~] structure without requiring the existing structure to comply with all of the requirements of this code, if the work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building, plus new additions, shall not exceed the height, number of stories and area specified for new buildings.

(4) Nonstructural repairs. Nonstructural alterations or repairs [~~to an existing structure~~] which [~~are nonstructural and~~] do not adversely affect a [~~any~~] structural member [~~of any part of the structure~~] having a required fire resistance rating may be made with the same materials of which the structure was [~~is~~] constructed.

(5) Moved structures. Buildings and structures moved into or within the Commonwealth shall comply with the provisions of this code for new buildings and structures and shall not be used or occupied [~~in whole or in part~~] until the certificate of occupancy has been issued by the code official.

Section 7. Department of Building Inspection. (1) Building code official. Each local government [~~singularly or by association with other local governments~~] shall employ a building code official or inspector and other code enforcement personnel [~~as~~] necessary to enforce this code within its jurisdiction. The department shall be responsible for

the enforcement of this code as it pertains to the buildings assigned to it by law [~~to it~~].

(2) Appointment. [~~All~~] Local building code officials shall be appointed by the chief appointing authority for the respective jurisdiction[~~s~~] and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors set forth [~~as detailed~~] in 815 KAR 7:070.

(3) Official records. Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all of these records shall be open to the public for inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

(4) Retention of records. The building code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections and notices and orders issued. These records shall be retained in accordance with state retention regulations promulgated by the Kentucky Department of Libraries and Archives pursuant to KRS 171.450.

(5) Building size includes firewall. To determine [~~For purposes of determining~~] plan review jurisdiction and necessity for design professionals, the calculation of the total square footage and occupant load for any project shall include areas on both sides of [~~any~~] firewalls.

Section 8. Duties and Powers of the Local Building Code Official. (1) General. The local building code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the buildings cited in KRS 198B.060(2).

(2) Jurisdiction of Commonwealth. Buildings owned by the Commonwealth shall [~~are~~] not be subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification.

(3) Preemptive authority. The board may withdraw or preempt authority for plan review and inspection for code compliance under this code from a local building department if [~~where~~] it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program allowing [~~and, thereafter, allow~~] the department to preempt that portion of a local program.

Section 9. Duties and Powers of the Department. (1) General. It shall be the responsibility of the department to review plans and specifications, issue permits, make inspections and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification; and

(j) All buildings owned by the Commonwealth regardless of occupancy classification or size.

(2) Additional responsibility. A [~~Any~~] local government may petition [~~to~~] the department for additional plan review responsibility in accordance with KRS 198B.060(5) and (6).

(3) Required inspections. The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals. [~~; and all~~] Inspection reports shall be in writing and certified by a responsible officer of an authoritative service or by the responsible individual.

(4) Credentials. The building code official and authorized representatives shall carry proper credentials of their respective office for the purpose of inspecting buildings and premises and the performance of duties under this code.

(5) Rule-making authority. The board shall have the power [~~as necessary in the interest of public health, safety and general welfare,~~] to adopt and promulgate amendments to the code and other rules and administrative regulations which are necessary to implement the provisions of this code. [~~and,~~] By means of the board's appeals [~~board~~] procedures, they may [~~to~~] issue interpretations which shall be binding upon the appellee and the building code officials. The building code official shall implement the provisions of this code to secure its [~~the~~] intent [~~thereof~~].

(6) Accepted engineering practice. In the absence of provisions not specifically contained in this code or final decisions of the appeals board, the administrative regulation, specifications and standards listed in Appendix A, "Referenced Standards" of the 1990 Edition of BOCA National Building Code filed by reference in 815 KAR 7:025, shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction as [~~therein~~] specified, and shall [~~therefore~~] be acceptable and enforceable where referred to by a specific section of the code.

Section 10. New Materials and Modifications. (1) Alternative materials and equipment. The provisions of this code shall not be [~~are not~~] intended to prevent the use of any material or method of construction not specifically prescribed by this code, if an alternative has been approved. An alternative material or method of construction shall be approved if [~~when~~] the building code official shall find [~~finds~~] that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is[~~, for the purpose intended,~~] at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability and safety.

(2) Supporting data. Building code officials may accept supporting data from the following sources to assist them in their determinations:

(a) Duly authenticated research reports from BOCA; or

(b) From other approved authenticated sources for [~~all~~] materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials and equipment. Used materials, equipment and devices may be used if they have been retested and placed in good and proper working condition and approved for use by the building code official.

(4) Modifications. Where there are practical difficulties involved in carrying out structural or mechanical provisions of this code, the building code official having plan review responsibility shall allow variance or modification to a provision upon application of the owner or the owner's representative, only if the spirit and intent of the law is observed and public health, safety and welfare is not jeopardized. The application for modification and the final decision of the building code official shall be in writing. If [~~When~~] a modification is granted by a local building code official, a copy of the application and the decision shall be forwarded to the department and the local fire code official.

Section 11. Inspections. (1) Preliminary inspections. Before issuing a permit, the appropriate code official shall[~~, if deemed necessary,~~] examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, or change the use [~~thereof~~]. [~~No~~] Construction shall not begin on buildings covered by this

administrative regulation until a local code official has issued a permit for construction and an official representing the department has issued a letter releasing the plans for construction (if the department has plan review responsibility).

(2) Required inspections. After issuing a building or construction permit, the building code official shall conduct periodic inspections [~~from time to time~~] during and upon completion of the work for which a permit has been issued. A record of all examinations, [~~and~~] inspections and [~~of all~~] violations of the KBC shall be maintained in accordance with the Kentucky Records and Retention Plan.

(3) Approved inspection agencies. The building code official may accept reports of approved inspection services and agencies which shall satisfy the requirements of the appropriate governmental entity.

(4) Trade-name dwelling inspections. Inspections for KBC compliance of trade-name or brand-name homes shall be the responsibility of the local building code official.

(5) Off-site construction. In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:025. The local building code official shall be responsible for inspection of [~~to inspect~~] these systems for zoning, water supply and sewage disposal, and other applicable local ordinance purposes.

(6) Final inspection. Upon completion of the building, the owner or agent of the facility shall request a final inspection. The building code official shall set a time for the [~~said~~] inspection and notify the owner or agent. If substantial compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this administrative regulation. If compliance has not been achieved, [~~any~~] violations shall be noted and immediately communicated to the owner, agent or other person holding the permit and the fire code official. It shall be the owner's responsibility to fulfill any compliance deficiencies noted.

(7) Fire code official inspections. The building code official shall cooperate with the fire code official by allowing the fire code official to inspect all buildings during construction. [~~Any~~] Recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official, and if a certificate of occupancy is issued contrary to the [~~said~~] written recommendations, the building code official shall give written notification of his decision to the fire code official and the department at once.

(8) Coordination of inspections. If [~~Whenever in the enforcement of this code or another code or ordinance~~] the responsibility of more than one (1) code official of the jurisdiction is involved during the enforcement of this code, another code or ordinance, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders [~~as fully as practicable~~] so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors nor multiple or conflicting orders. If [~~Whenever~~] an inspector from any agency or department observes an apparent or actual violation of a [~~some~~] provision of [~~some~~] law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the code official having jurisdiction.

Section 12. Right of Entry. (1) Implied consent. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that the building is constructed in compliance with the Kentucky Building Code The inspector may enter [~~upon~~] the premises during any reasonable hour.

(2) Enforcement. [~~In the discharge of duties,~~] The building code official or authorized representative shall have the authority to enter at any reasonable hour any building, structure or premises in the jurisdiction to enforce the provisions of this code.

Section 13. Application for Permit Required. (1) An application shall be filed, in writing, with the appropriate building code official and a permit shall be obtained before the following:

(a) The construction, enlargement or alteration of a structure; or

(b) The change of use as prescribed by Section (2) of this administrative regulation; or

(c) The installation or alteration of equipment requiring a permit.

Exception: Ordinary repairs not involving a violation of the KBC shall be exempt from this provision. [~~When permit required. It shall be unlawful to construct, enlarge or alter a structure; or to change to another use as prescribed by Section 6(2) of this regulation; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building code official in writing and obtaining the required permit therefor; except that ordinary repairs which do not involve any violation of the KBC shall be exempted from this provision.~~]

(2) Form of application. The application for a permit shall be submitted to the code official, in writing, [~~and in a form the code official prescribes~~] and shall be accompanied by the required fee.

[~~(3) Description of work.~~] The application shall contain:

(a) A general description of the proposed work;

(b) The location of the proposed work;

(c) The use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure; and

(d) Any additional information required by the code official.

(3) [~~(4)~~] By whom application is made. Application for all permits shall be made by the owner or lessee of the building or structure, or by their agent [~~of either~~], or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a verified written statement by the person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(4) [~~(5)~~] Plans and specifications. The application for the permit shall be accompanied by specifications and plans drawn to scale[~~,~~] with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building code official shall cooperate with the fire code official by allowing the fire code official to review all plans. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official and he shall report his decision to the fire code official [~~at once~~]. If [~~When~~] quality of materials is essential for conformity to the KBC, specific information shall be given to establish the [~~such~~] quality of the materials. [~~; and~~] The KBC shall not be cited[~~,~~] or the term "legal" or its equivalent shall not be used as a substitute for specific information. The building code official may waive the requirement for filing plans if [~~when~~] the work involved is of a minor nature.

(5) [~~(6)~~] Site plan. [~~There shall also be~~] A site plan shall be filed showing, to scale, the size and location of [~~all~~] the new construction and all existing structures on the site, [~~and~~] the distances from lot lines, the established street grades and the proposed finished grades. The site plan [~~; and it~~] shall be drawn in accordance with an accurate boundary line survey.

(6) [~~(7)~~] Engineering details. The building code official may require adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how the required structural and fire resistance rating integrity shall be maintained[~~,~~] and where [~~a~~] penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(7) [(8)] Time limitation of application. An application for permit for any proposed work shall [should] be considered [deemed to have been] abandoned six (6) months after the date of filing if [, unless the application has been diligently prosecuted or] a permit has not [shall have] been issued. [; except that] The building code official shall grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each if there is reasonable cause.

(8) [(9)] Amendments to application. [Subject to the limitations of other provisions of this section,] Amendments may be filed to a plan, application or other records which have been submitted, [accompanying the same may be filed] at any time before completion of the work [for which the permit is sought or issued]. The amendments shall be filed with and made [deemed a] part of the original application [and shall be filed therewith].

(9) [(10)] Revocation of permit. The building code official may revoke a permit or approval issued under the KBC if [in case of any] false statements or misrepresentations have been given on [in] the application or [on the] plans.

Section 14. Permit Required. (1) Action on application. The building code official shall examine or cause to be examined all applications for permits and amendments [thereto] within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, the building code official shall reject the [such] application, in writing, stating the reasons for rejection [therefor]. If the building code official finds that the proposed work conforms to the requirements of this code and all applicable laws and ordinances [applicable thereto], he shall issue a permit [therefor] as soon as practicable.

(2) Suspension of permit. A [Any] permit issued shall become invalid if the authorized work has [is] not commenced within one (1) year after issuance of the permit, or if the authorized work has been [is] suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) Previous approvals. The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been [heretofore] issued or otherwise lawfully authorized by approved plans, if [so long as the] substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) Signature to permit. The building code official or his authorized subordinate shall attach his signature to every permit[, or the building code official may authorize a subordinate to affix the signature thereto].

(5) Conditions to permit. The building code official shall record and communicate to the owner or agent, the terms and conditions related to an approval to commence construction.

(6) Approval of part. The building code official shall be [is] authorized to issue a permit for the construction of foundations or any other part of a building or structure before the [entire] plans and specifications for the whole building or structure have been submitted, if adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of the permit for the foundations or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure shall be granted.

(7) Approved plans. The building code official shall stamp or endorse, in writing, the corrected approved plans [approved,] and approved plans [that set] shall be available at the building site and [,] open to inspection by [of] the building code official or an authorized representative at all reasonable times.

(8) Posting of permit. A true copy of the building permit shall be available on the site of operation open to public inspection during the entire construction process [time of prosecution of the work and until the completion of the same].

Section 15. Conditions of Permit. (1) Payment of fees. A permit shall not be issued until the fees have been paid as prescribed by Section 16 of this administrative regulation. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) Compliance with code and other laws. All work shall conform to the appropriate application, [and] plans and approved amendments for which the permit has been issued [and any approved amendments thereto], and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this code, except as specifically stipulated by modification or legally granted variation as described in the application.

(3) Change in site plan. A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan[,] unless a revised plan showing the changes, accompanied by the necessary affidavit of owner or applicant, shall have been filed and approved. [; except that]

Exception: The revised plan shall not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) General. A permit to begin work for new construction, alteration, removal or other building operation shall not be issued until the fees prescribed by law shall have been paid to the department, if applicable, and to the local building department. If [, nor shall] an amendment to a permit necessitates [necessitating] an additional fee because of an increase in the estimated cost of the work involved, the permit shall not be approved until the additional fee has been paid.

(2) Special fees. [The] Payment of [the] fees for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections or [,] certificates of occupancy [or other privileges or requirements, both within and without the jurisdiction of building inspection].

(3) New construction and alterations. The fees for plan review and inspection and other functions performed by the department pursuant to KRS Chapter 198B shall be paid in accordance with 815 KAR 7:013. Each local government shall adopt reasonable fees for building permits and the performance of functions [performed by it] pursuant to this code. The fees shall be designed to comply with KRS 198B.060(18).

Section 17. Certificate of Occupancy. (1) New buildings. A building or structure [hereafter erected] shall not be used or occupied [in whole or in part] until the appropriate building code official has issued a certificate of occupancy in accordance with this administrative regulation. [; except that]

Exception: A building for which a permit was legally granted prior to the effective date of this administrative regulation may be constructed and occupied under the provisions of relevant administrative regulations in force at the time the permit was issued, if substantial construction has commenced within one (1) year from the date the permit was issued.

(2) Alterations. A building or structure [hereafter] enlarged, extended or altered to change from one (1) use group to another as described in Section 6(2) of this administrative regulation, [in whole or part,] shall not be occupied or used under that new use until a certificate shall have been issued by the building code official[,]

certifying that the work has been completed in accordance with the provisions of the approved permit.

(3) Change in use and occupancy. After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction shall be [is] prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted, to another prohibited use shall be deemed a violation of this code.

(4) Temporary occupancy. Upon the request of the holder of a permit, the building code official shall issue a temporary certificate of occupancy for a building or structure[, or part thereof,] before the entire work covered by the permit has been completed, if [provided] that portion or portions may [can] be occupied safely without endangering life or public welfare prior to full completion of the building or structure [without endangering life or public welfare].

(5) Certificate information. If [When] a building or structure is entitled to a certificate [thereto], the building code official shall issue a certificate of occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which any portion of the building or structure may be used [in its several parts]. The certificate of occupancy shall contain a citation of the edition of the Kentucky Building Code under which compliance was required. It may also specify the following information:

(a) The use group, in accordance with the provisions of Article 3 of the KBC;

(b) The maximum live load on all floors as prescribed in Article 11 of the KBC;

(c) The occupancy load in the building or structure and all parts thereof as defined in Article 3 and Article 8 of the KBC; and

(d) Any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Posted use and occupancy. A [Every] building or [and] structure or any portion of a building or structure [and part thereof] designed for business, factory and industrial, high hazard, mercantile, or storage use (use group B, F, H, M, or S), as defined in Article 3 of the KBC, shall have [be] posted on all floors [by the owner, with] a suitably designed placard stating the use group and the occupant load of the building or structure. The placard shall be in a form designated by the department and [. The placard] shall be securely fastened to the building or structure in a readily visible place. It shall be the owner's responsibility to assure placement of the placard. [, stating the use group and the occupant load.]

(2) Posted occupant load. A [Every] room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be installed and maintained in a legible manner by the owner or an authorized agent. The signs shall be durable and shall indicate the number of occupants permitted for each room use. Place of assembly rooms or spaces which have multiple-use capabilities shall be posted for all approved [such] uses.

(3) Replacement of posted signs. All posted signs shall be furnished by the owner and shall be of a permanent design. The signs shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC[, or cause same to be done,] contrary to or in conflict with or in violation of any of the provisions of this code.

(2) Notice of violation. The building code official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detailed statement or a plan approved under this code [thereunder], or in violation of a permit or certificate issued under the provisions of this code. The order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) Prosecution of violation. If the notice of violation is not complied with promptly, the building code official shall request the legal counsel of the jurisdiction to institute [the] appropriate legal action [proceeding at law] or in equity to restrain, correct or abate the violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) Penalties. A [Any] person who [shall] violates a provision of the KBC or [shall] fails to comply with [any of] the requirements of the KBC [thereof] or a person who [shall] erects, constructs, alters or repairs a building or structure in violation of an approved plan or proper direction of the code official[,] or of a permit or certificate issued under the provisions of the KBC, shall be subject to the penalties [as may be] provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief. The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existed prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) Hindering an inspection. A [No] person shall not hinder an inspector enforcing [any of] the provisions of this code in the performance of the inspectors lawful duties under this chapter.

Section 20. Emergency Measures. (1) Vacating structures. If, in the opinion of the building code official [When], during construction on a building for which a permit shall be [is] required, [in the opinion of the building code official,] there is actual and immediate danger of failure or collapse of a building or structure or a portion of a building or structure [any part thereof] which would endanger life[,] or if a building or [when any] structure or a portion of a building or [part of a structure] has fallen and life is endangered by [the] occupation of the building or structure, the building code official shall be [is hereby] authorized and empowered to order and require the inmates and occupants to vacate the building or structure [same forthwith]. The building code official shall cause to be posted at each entrance to the building a notice reading as follows: "This structure is unsafe and its use or occupancy has been prohibited by the building code official." It shall be unlawful for any person to enter the building or structure except for the purpose of making the required repairs or of demolishing the building or structure [same].

(2) Temporary safeguards. If [When], in the opinion of the building code official, there is actual and immediate danger of collapse or failure of a building or structure (over which the building code official has jurisdiction) which would endanger life, pursuant to KRS Chapter 198B and this administrative regulation, the building code official shall order the necessary work or special inspection to be performed [done] to render the building or structure or any portion of the building or structure [part thereof] temporarily safe.

Section 21. Stop Work Order. (1) Notice to owner. Upon notice from the building code official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, the work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, [or] to the owner's agent, or to the person doing the work. The stop-work order [; and] shall state the conditions under which work may be resumed.

(2) Unlawful continuance. A [Any] person who shall continue [any] work in or about the structure after having been served with a

stop-work order, except the [~~such~~] work [~~as~~] that person is directed to perform to remove a violation or unsafe condition, shall be liable to the restraints provided in Section 19 of this administrative regulation.

Section 22. Local Board of Appeals; General. Local appeals boards may be appointed to hear appeals from the decisions of the local code official in accordance with the provisions of KRS 198B.070.

Section 23. Appeals Board Procedures. (1) General. [~~All~~] Appeals from the decisions of building code officials shall be conducted in accordance with the appeals provisions of KRS 198B.070.

(2) Appeal by fire code official. Decisions rendered by the building code official with respect to enforcement of the Kentucky Building Code on any building may be appealed by the local fire code official of the jurisdiction if the fire code official is aggrieved by that decision.

(3) Application procedure. Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation of why the decision of the state building code official or local building code official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

Section 24. Professional Architectural and Engineering Services. (1) General. All design for new construction [~~work~~], alteration, repair, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by KRS Chapters 322 and 323, shall be prepared by Kentucky-licensed professional architects or engineers and all plans, computations and specifications required for a building permit application for the work shall bear the required signature and seals of [~~thereof by~~] the design professionals, as required by law.

(2) Special inspections. If [~~When~~] construction on a building began prior to approval by the building code official or the construction does not conform to the approved plans or the standards required by the code, the building code official may require special inspections and reports [~~thereof~~] if necessary to assure safety.

(3) Fees and costs. [~~All~~] Fees and costs related to the performance of special inspections by professional services shall be borne by the owner.

Section 25. Proof of Insurance. (1) Compliance with law. The issuance of a building permit shall be contingent upon presentation of an affidavit, as required by KRS 198B.060(10).

(2) General applicability. Compliance with this section may be achieved by having an affidavit of general applicability for all permits to be taken during the life of the construction company on file in the office of the code official issuing the permit. The affidavit shall state that the contractor and all persons working in association with that contractor comply, or will comply, with the worker's compensation and unemployment insurance laws.

Section 26. Alternative Codes; Applicable Federal Codes. If [~~Whenever~~] the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections[~~;~~] using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety shall be [~~is~~] maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 27. Day Care Centers; Fire Safety Requirements. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, NFiPA Pamphlet #101, shall be deemed to have satisfied all the fire safety requirements of the Kentucky Building Code.

Section 28. Effective dates; General. Until December 31, 1990, the department shall accept plans in compliance with the requirements of either the 1987 Edition BOCA Code or the 1990 Edition, together with any Kentucky amendments [~~thereto~~]. After December 31, 1990, all plans shall be designed to conform to the 1990 Edition of the BOCA Code as set forth in this regulation and 815 KAR 7:025.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 29, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: Contractors, architects, engineers, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because this regulation establishes the administration and enforcement section of the Kentucky Building Code (815 KAR 7:025).

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency as this regulation merely provides the administration and enforcement section to 815 KAR 7:025, KBC.

(a) Direct and indirect costs or savings: Cost of printing KBC (this regulation constitutes Article 1 of the KBC) but this money is recouped by the sale of the code book.

1. First year: See (a) above.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was rejected. Board of Housing reviews code sections for adoption or amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No tiering is involved in this amendment since each certificate of occupancy shall contain the same statement identifying the edition of the code under which the building was constructed.

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 will affect a part of local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Division of Building Codes Enforcement**
**(Proposed Amendment)**

**815 KAR 7:025. Kentucky Building Code.**

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This administrative regulation adopts the BOCA National Building Code/1990, Eleventh Edition, Articles 2 through 32 and Appendices A through D with modifications and establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This amendment is necessary to update the National Electrical Code to the latest edition by amending Appendix A and clarifying the jurisdiction of the building code official's permit and inspection responsibilities and those of the fire code official. These amendments were approved by the Board of Housing, Buildings and Construction. [~~clarify the code requirements of horizontal sliding doors in Section 8; amend seismic requirements in Sections 11 and 13, and amend Appendix A relating to the Safety Code for Elevators and Escalators.~~]

Section 1. Article 2 of the BOCA National Building Code/1990, Eleventh Edition (BOCA Code) incorporated in Section 2 of this administrative regulation is amended to add the following definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety and in its place all requirements for the administration and enforcement of this administrative regulation shall be set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Amend subsection 619.1, Referenced codes, to read as follows: "The fire code official shall have exclusive jurisdiction for code enforcement of the storage, handling, processing and transportation of flammable and combustible liquids pursuant to 815 KAR 10:040 (the Kentucky Fire Prevention Code); and fees for the installation and alteration of tanks and piping systems shall be paid in accordance with Section 130.3.9 of this Code."

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

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

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

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

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

ments listed in this section shall still be met."

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

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

(1) Delete subsection 804.2.1 in its entirety.

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

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

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

TABLE 809.3
BUILDINGS WITH ONE EXIT

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

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

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

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

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

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

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

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

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

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

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

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

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

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

Note e. NP = Not Permitted.

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

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

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

(9) Amend subsection 813.4.2, Panic Hardware, as follows:

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

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

1. They are free-swinging; and

2. The calculated occupant load does not exceed 150; and

3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

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

inches above the finished floor."

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

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

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.

2. Buildings of Use Group I-3.

3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating

an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend subsection 1113.1 to read as follows: "1113.1 General: Every building and structure, and portion thereof, shall be designed and constructed to resist the earthquake effects determined in accordance with this section. Seismic zones shall be determined by location in Figure 1113.1; except that the risk zone assigned to each listed county on Page 283 shall supersede any general area requirements as shown on the face of the map. Where wind load requirements of Section 1112.0 would produce higher stresses, these stresses shall be used in lieu of the stresses resulting from earthquake forces."

(4) Amend subsection 1113.1 by creating an additional exception to read as follows: "4. Alternate method: Any building or structure designed and constructed in conformity with all seismic related provisions located between pages 249 and 353 of the 1992 Accumulative Supplement of the BOCA National Building Code together with the special inspection requirements of Section 1308.1 shall be exempt from the requirements of this section."

(5) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

| Earthquake Risk Zone #1 | | | |
|---|---|---|---|
| Adair | Elliott | Laurel | Oldham |
| Allen | Estill | Lawrence | Owen |
| Anderson | Fayette | Lee | Owsley |
| Barren | Fleming | Leslie | Pendleton |
| Bath | Floyd | Lewis | Perry |
| Boone | Franklin | Lincoln | Pike |
| Bourbon | Gallatin | Logan | Powell |
| Boyd | Garrard | Madison | Pulaski |
| Boyle | Grant | Magoffin | Robertson |
| Bracken | Grayson | Marion | Rockcastle |
| Breathitt | Green | Martin | Rowan |
| Breckinridge | Greenup | Mason | Russell |
| Bullitt | Hancock | Meade | Scott |
| Butler | Hardin | Menifee | Shelby |
| Campbell | Harrison | Mercer | Simpson |
| Carroll | Hart | Metcalfe | Spencer |
| Carter | Henry | Monroe | Taylor |
| Casey | Jackson | Montgomery | Todd |
| Christian | Jefferson | Morgan | Trimble |
| Clark | Jessamine | Muhlenberg | Warren |
| Clay | Johnson | McCreary | Washington |
| Clinton | Kenton | McLean | Wayne |
| Cumberland | Knott | Nelson | Whitley |
| Daviess | Knox | Nicholas | Wolfe |
| Edmonson | Larue | Ohio | Woodford |

| Earthquake Risk Zone #2 | | Earthquake Risk Zone #3 | |
|---|---|---|---|
| Bell | Hopkins | Ballard | Hickman |
| Caldwell | Letcher | Carlisle | Livingston |
| Calloway | Lyon | Fulton | Marshall |
| Crittenden | Trigg | Graves | McCracken |
| Harlan | Union | | |
| Henderson | Webster | | |

(6) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 $m^2$) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Amend subsection 1308.1 to read as follows: "1308.1 General: The owner shall provide special inspections where application is made for construction under the alternative method of seismic design allowed by subsection 1113.1(4). The special inspections required by subsections 1308.1 through 1308.8 shall apply to seismic related construction only and this section shall not be mandatory for any other permit or construction. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exceptions:

1. Special inspections are not required for work of a minor nature or when warranted by conditions approved by the building official.

2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by KRS Chapters 322 and 323.

3. Special inspections are not required for buildings of Use Group R-3."

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 $m^2$) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 $m^2$) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 $m^2$) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990 with the exception of rule 102.2(c)(4)".

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

| | |
|---|---|
| Aircraft Hangars | #409 |
| Pyroxylin Plastics | #40C |
| Flammable Liquids | #30 |
| Laboratories | #45 |
| Fireworks | #1124 |
| L.P. Gas Storage | #58 |
| High Piled Storage in Excess of 12 ft. in height | #231 |
| Rubber Tire Storage | #231D |
| Baled Cotton Storage | #231E |

| | |
|---|---|
| Rolled Paper Storage | #231F |
| Rangehoods | #96 |
| Computer Rooms | #75 |
| Archives and Record Centers | #232AM |
| L.P. Gas Storage and Handling | #59A |
| Explosion Prevention Systems | #69 |
| Code for the Manufacture and Storage of Aerosol Products | #30B |
| Installation of Closed-head Foam Water Sprinkler Systems | #16A |
| Fur Storage | #81 |
| Cooling Towers | #214 |
| Marinas and Boatyards | #303" |

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1991 Edition."

(7) Amend Appendix A by changing the Edition date to "1991" for National Fire Protection Association (NFiPA) Pamphlets #13 and #13R.

(8) Amend Appendix A by changing the Edition date to "1993" for National Fire Protection Association (NFiPA) Pamphlet #70, National Electrical Code.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: Contractors, architects, engineers, design professionals, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year: See above.

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The National Electrical Code and the Building Code itself contain different requirements for buildings, depending upon size, use and construction type.

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 will affect a part of local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Division of Plumbing**
**(Proposed Amendment)**

**815 KAR 20:120. Water supply and distribution.**

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040 (10), 318.130

NECESSITY AND FUNCTION: The department is directed by

KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification [~~standard~~] specification number of the material accepted in those installations. This amendment was approved by the Plumbing Code Committee and the Board of Housing in an effort to prevent accidents caused by sudden changes in water temperature in showers. [~~to add new standards for polyethylene plastic pipe for cold water only and hot or cold water applications.~~]

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe conveying and the surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or other piping connections to the system.

(4) Cross connections shall be prohibited except as approved by the authority having jurisdiction, and suitable protective devices shall be installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

| Fixture | Minimum Air Gap | |
|---|---|---|
| | When not affected by near wall (inches) | When affected by near wall (inches) |
| Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter | 1 | 1 1/2 |
| Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter | 1 1/2 | 2 1/4 |
| Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter | 2 | 3 |
| Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter) | 1 | 1 1/2 |
| Effective openings greater than 1 inch | 2 x diameter of effective opening | 3 x diameter of effective opening |

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available,

and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

| Fixture or Equipment | Method of Installation |
|---|---|
| Aspirators, ejectors, and and showers | CL at least 6 in. above flood level of receptacle |
| Bidets | CL at least 6 in. above flood level of receptacle |
| Cup beverage vending machines | CL at least 12 in. above flood level of machine |
| | On models without built-in vacuum breakers: |
| Dental units | On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl. |
| Dishwashing machines | CL at least 6 in. above flood level of machine |
| Flushometers (closet & urinal) | CL at least 6 in. above top of fixture supplied |
| Garbage can cleaning machines | CL at least 6 in. above flood level of machine |
| Hose bibs (sinks or receptacles) | CL at least 6 in. above flood level of receptacle served |
| Hose outlets | CL at least 6 in. above highest point on hose line |
| Laundry machines | CL at least 6 in. above flood level of machine |
| Lawn sprinklers | CL at least 12 in. above highest sprinkler or discharge outlet |
| Steam tables | CL at least 12 in. above flood level |
| Tanks & vats | CL at least 6 in. above flood level rim or line |

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

| TYPE AND PRESSURE | DESCRIPTION | INSTALLED AT | EXAMPLES OF INSTALLATIONS | APPLICABLE SPECIFICATIONS ~~[STANDARDS]~~ |
|---|---|---|---|---|
| Reduced Pressure Principle Backflow Preventer For high hazard cross connections. | Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks. | All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure. | Main Supply Lines<br>Commercial Boilers<br>Cooling Towers<br>Hospital Equipment<br>Processing Tanks<br>Laboratory Equipment<br>Waste Digesters<br>Car Wash<br>Sewage Treatment<br>Lawn Sprinklers | A.S.S.E. No. 1013<br>A.W.W.A. C506<br>FCCCHR of USC<br>CSA B.64.4<br>Sizes 3/4 " - 10" |

| | | | | |
|---|---|---|---|---|
| (A) Double Check Valve Assembly For low hazard cross connect-ions. | Two independent check valves. Supplied with shutoff valves and ball type test cocks. | All cross connect-ions subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure. | Main Supply Lines Food Cookers Tanks and Vats<br>Commercial Pools | A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC<br>CSA B.64.5 Sizes 3/4" - 10" |
| (B) Dual Check Valve Backflow Preventer For low hazard applications. | Two independ-ent check valves. Checks are re-movable for testing | Cross connections where there is a low potential health hazard and moderate flow re-quirements. | Post ground hydrants. | A.S.S.E. No. 1024 Sizes 3/4" & 1" |
| (A) Backflow Pre-venter with In-termediate Atmos-pheric Vent For moderate hazard cross connections in small pipe sizes. | Two independent check valves with intermediate vac-uum breaker and relief valve. | Cross connections subject to back pressure or back siphonage where there is a mod-erate health hazard. Continuous pressure. | Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential | A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4" |
| | | Pump outlet to pre-vent backflow to carbon dioxide gas and carbonated water into the water supply sys-tem to beverage machines. | Postmix Carbonated Beverage Machine | Special Approvals |
| (B) Laboratory Faucet and Double Check Valve with Intermediate Vac-uum Breaker In small pipe sizes for mod-erate to low hazard. | Two independent check valves with intermediate vacuum breaker and relief vent. | Cross connection subject to back pressure or back siphonage where there is a mod-erate to low health hazard. | Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks | A.S.S.E. No. 1035 (N-LF9) |
| (A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections. | Single float and disc with large atmospheric port. | Cross connections not subject to backpressure or continuous pres-sure. Install at least 6" above fixture rim. Pro-tection against back siphonage only. | Process Tanks Dishwashers Soap Dispensers Washing Machines | A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3" |
| (B) Antisiphon Pressure Breakers For moderate to high hazard cross connections. | Spring loaded single float and disc with inde-pendent 1st check. Supplied with shutoff valves and ball type test cocks. | This valve is de-signed for install-ation in a contin-uous pressure pota-ble water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only. | Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers | A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2" |
| (C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets. | Single check with atmospheric vacuum breaker vent. | Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure. | Hose Bibs Service Sinks Hydrants | A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose |

NOT OXIC

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

| | Degree of Hazard | | | Acceptable Protection | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Backflow | | Back siphonage | |
| Type of Connection | Severe | Moderate | Minor | Air Gap | Reduced Pressure Device | Double Check Valve Assembly | Pressure Type Vacuum Breaker | Atmospheric Type Vacuum Breaker |
| I. Connections subject to back pressure from: | | | | | | | | |
| A. Pumps, tanks, and lines handling: | | | | | | | | |
| 1. Toxic substance | X | | | X | X | | | |
| 2. Nontoxic subst. | | X | | X | X | X | | |
| B. Boilers | | | | | | | | |
| 1. With chemical additives | X | | | X | X | | | |
| 2. Without chemical additives | | X | | X | X | X | | |
| C. Gravity due to obvious site conditions subject to: | | | | | | | | |
| 1. Contamination by toxic substances | X | | | X | X | | | |
| 2. Contamination by nontoxic subst. | | X | | X | X | X | | |
| II. Water outlets and connections not subject to back pressure: | | | | | | | | |
| A. Connection to sewer or sewage pump | X | | | X | | | | |
| B. Outlet to receptacles containing toxic substances | X | | | X | X | | X | X |
| C. Outlet to receptacles containing nontoxic substances | | X | | X | X | X | X | X |
| D. Outlet into domestic water tanks | | | X | Each case treated separately | | | | |
| E. Flush valve toilets | X | | | X | X | | X | X |
| F. Flush valve urinals | | X | | X | X | | X | X |
| G. Outlets with hose attachments subject to contamination from: | | | | | | | | |
| 1. Toxic substances | X | | | X | X | | X | X |
| 2. Nontoxic subst. | | X | | X | X | X | X | X |
| H. Outlets to recirculating cooling tower: | | | | | | | | |
| 1. With chemical additives | X | | | X | X | | | |
| 2. Without chemical additives | | X | | X | X | X | | |

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than

five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

| Fixture Branches | Nominal Pipe Size (Inches) |
|---|---|
| Bath tubs | 1/2 |
| Combination sink and tray | 1/2 |
| Cuspidor | 1/2 |
| Drinking fountain | 1/2 |
| Dishwasher (domestic) | 1/2 |
| Kitchen sink (res.) | 1/2 |
| Kitchen sink (com. | 1/2 or 3/4 as required |
| Lavatory | 1/2 |
| Laundry tray | 1/2 |
| Sinks (service, slop) | 1/2 |
| Sinks flushing rim | 3/4 |
| Urinal (flush tank) | 1/2 |
| Urinal (direct flush type) | 1/2 or 3/4 as required |
| Water closet (tank type) | 1/2 |
| Water closet (flush valve type) | 1 |
| Hot water boilers | 3/4 |
| Hose bibs | 1/2 |
| Wall hydrant | 1/2 |
| Domestic clothes washer | 1/2 |
| Shower (single head) | 3/4 |

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water only and ASTM F-877 for hot or cold water applications, copper tubing size PE produced and labeled as ASTM D-2737 for water service only if installed with compression

couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction. Polyethylene, PVC or CPVC shall not be used below ground under a house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations. ~~[Temperature and pressure control devices shall be installed on all shower installations and shall maintain an even temperature and pressure and shall provide nonscald protection. These devices shall be installed on all installations other than in homes or apartment complexes.]~~

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or a group of fixtures shall be valved.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; and

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

| Maximum capacity of water supply line to tank | Diameter of over-flow pipe (inches ID) | Maximum capacity of water supply line to tank | Diameter of over-flow pipe (inches ID) |
|---|---|---|---|
| 0- 50 gpm | 2 | 400- 700 gpm | 5 |
| 50-150 gpm | 2 1/2 | 700-1000 gpm | 6 |
| 150-200 gpm | 3 | Over 1000 gpm | 8 |

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: Master and journeymen plumbers.

(a) Direct and indirect costs or savings to those affected: The cost ranges from $3.50 to $15 per unit.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating State Plumbing Code with approved amendments to regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by amending regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is used in the amendment in that only when showers are involved is scald protection provided.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Commission on Fire Protection Personnel**
**Standards and Education**
**State Fire Marshal's Office**
**(Proposed Amendment)**

**815 KAR 45:020. Commission meetings and proceedings.**

RELATES TO: KRS 95A.040, 95A.050(1)
STATUTORY AUTHORITY: KRS 95A.050(1), (3)
NECESSITY AND FUNCTION: This administrative regulation sets forth definitions to be used in this chapter as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the commission. This amendment is

necessary to comply with KRS Chapter 13A drafting rules and LRC staff recommendations including specifying actual voting member required for certain agency actions.

Section 1. Definitions. [~~As used in this chapter unless the context requires otherwise:~~] (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education.

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, or a municipal, county or urban-government fire department.

(6) "Fire protection personnel" means an [~~and includes, but is not limited to, any~~] employee or member of a "fire department" [~~as defined in subsection (5) above,~~] whether paid or unpaid, who is engaged in any of the following:

(a) Fire prevention;

(b) Inspecting buildings for compliance with building, fire, energy and life-safety codes and compliance with the Architectural Barriers Act;

(c) Fire suppression;

(d) Fire and arson investigation;

(e) Fire-related emergency medical and rescue work; [~~and~~]

(f) Other allied fields recognized and approved by the commission.

(7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.

Section 2. (1) Voting on reports, recommendations, and contracts. In order for any of the following decisions or actions to be made, at least eight (8) appointed members of the commission shall have cast affirmative votes. [~~Whenever the commission is requested, or decides, to recommend~~]

(a) Recommending administrative regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a);

(b) Entering [~~to enter~~] into contracts with other agencies or persons pursuant to KRS 95A.040(2);

(c) Recommending [~~to recommend~~] to the commissioner administrative regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or

(d) Making [~~to make~~] studies, recommendations and reports to the Governor or legislature pursuant to KRS 95A.040(1)[~~, at least six (6) appointed members of the commission shall have cast affirmative votes for any such decision or action~~].

(2) Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy shall also apply to [~~likewise governs~~] the proceedings of any subcommittee of the commission.

(3) Parliamentary rules. The commission shall adopt appropriate [~~from time to time such~~] rules for the orderly conduct of commission or subcommittee meetings [~~as they may deem proper~~].

(4) Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any administrative regulation adopted thereunder.

(5) Subcommittees. The commission may establish and govern the [~~such~~] subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with the Department for Audit and Technical [~~Occupational~~] Education to develop curricula and training delivery plans, in conjunction with that department's advisory committee, for the entire range of local fire department duties, technology and activities. In addition, the Department for Audit and Technical [~~Occupational~~] Education may furnish school facilities in and among the vocational and technical schools under its jurisdiction for this [~~such~~] training. The Department for Audit and Technical [~~Occupational~~] Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Audit and Technical [~~Occupational~~] Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs.

(3) Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life-safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.

Section 4. Coordination among Agencies. Upon approval by the commission, the Department for Audit and Technical [~~Occupational~~] Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University, and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed [~~therefore~~] in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance to fire protection personnel.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: February 4, 1993

FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: Wayne Jordan

(1) Type and number of entities affected: 850 paid & volunteer fire departments.

(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: Actual expenses of commission members to attend meetings as in the past 10 years per KRS 95A.020.

2. Continuing costs or savings: Actual expenses of commission members to attend meetings as in the past 10 years per KRS 95A.020.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Only travel vouchers of the commission members.

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available to the commission meetings.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None that the Fire Commission is aware of.

(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: Submitted for quadrennial review. No changes.

TIERING: Was tiering applied? No. This administrative regulation merely provides general information and procedures for the activities of the commission.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of State Fire Marshal**
**(Proposed Amendment)**

**815 KAR 45:035. Education incentive.**

RELATES TO: KRS Chapter 95A

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY AND FUNCTION: KRS 95A.240(1) authorizes the Commission on Fire Protection Personnel Standards and Education to issue such administrative regulations as are necessary to properly administer the [~~Professional~~] Firefighters Foundation Program Fund. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual paid firefighters to share in the fund. This amendment is necessary to comply with technical requirements of KRS Chapter 13A and to add the forms for applying for incentive pay.

Section 1. Definitions. [~~As employed in the Kentucky Professional Firefighters Program Fund administrative regulations, the following words and phrases have the following meanings:~~]

(1) "Allowable sickness, injury or other medical causes" for the purpose of this administrative regulation shall mean reasons for which time off the job is granted by the local government for sickness, injury, or other medical causes.

(2) "Certified training" means firefighter training given by a certified instructor and approved and recorded by the commission.

(3) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) [~~(4)~~] "Fiscal year" means the period July 1 through June 30 of each twelve (12) month period.

(6) "Fund" as defined by KRS 95A.210(2).

(7) [~~(5)~~] "Full-time firefighters" means individuals who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations, but does not include public safety officers or any peace officer who has responsibility for the prevention and detection of crime other than arson.

(8) [~~(6)~~] "Incentive pay" means monies from the fund used to supplement compensation paid to full-time paid firefighters.

(9) [~~(7)~~] "Leave of absence" for the purpose of this administrative regulation shall mean a leave granted by the local government by which the firefighter is employed.

(10) "Local government" as defined by KRS 95A.210(3).

Section 2. Eligibility. Each local government which meets the following requirements shall be eligible to participate and share in the distribution of funds if [~~when~~] it has made application on forms prescribed by the commission and outlined in Section 6 of this administrative regulation and if the commission has determined that the local government has met the eligibility criteria as stated in KRS 95A.230.

(1) The commission shall review the qualifications of firefighters employed by local fire department units after the effective date of this administrative regulation[,] to determine the basic training, if any, which the firefighter may be required to successfully complete prior to being eligible to participate in the fund.

(2) Requires compliance with all rules and administrative regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A.

(3) Requires compliance with all provisions of law applicable to local firefighters.

(4) Any firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service, forfeits his [~~such~~] eligibility and must meet the minimum educational requirement to reparticipate in the fund.

(5) A [~~Any~~] firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates or is granted a leave of absence from firefighter service for a period exceeding one (1) year (365 days) shall forfeit his [~~s such~~] eligibility and shall [~~must~~] meet the minimum training requirements ([~~as~~] set forth in subsection (6) of this section) to reparticipate in the fund. If his separation or leave of absence does not exceed one (1) year, he shall be considered eligible for participation in the fund.

(6) If [~~Should~~] an individual firefighter is [~~be~~] off duty due to allowable sickness, injury, or other medical cause in his first year of employment, he shall have an additional amount of time equal to the required time off to acquire the balance of his initial 400 hours of required training. After the first year an individual shall also have the additional amount of time equal to the required time off to acquire his 100 hours of required training to maintain his eligibility.

(7) A copy of the high school diploma or GED certificate for each firefighter, if [~~where~~] required, shall [~~must~~] be maintained by the local unit and shall [~~must~~] be available for review by appropriate commission personnel.

(8) If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund if [~~providing~~] he continues to meet the requirements of the fund as

established [~~set down~~] by the commission.

(9) If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training he has received [~~by him/her~~] shall be recognized by the fire department to which he[~~/she~~] has transferred and shall be considered toward his[~~/her~~] eligibility for participation in the fund.

(10) A [~~No~~] firefighter shall not receive monies from this fund for employment with more than one (1) employer and [~~in no instance~~] shall not receive dual payment.

Section 3. Participation Requirements. (1) [~~Participation in the Professional Firefighter's Incentive Pay Program during the first fiscal year of the program's existence (January 1 - June 30, 1981) shall require that application be made to the commission within the dates of August 1, 1980 through October 20, 1980. Thereafter,~~] Application shall [~~must~~] be made [~~annually~~] by local governments for new [~~or continued~~] participation. Applications shall be on the applicable forms in Section 6 of this administrative regulation and shall be accepted from February 1 through April 30 of each year for payment to begin July 1 of that fiscal year. Local governments failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS Chapter 95A or the rules and administrative regulations issued by the commission [~~thereunder~~].

Section 4. Local Unit Distribution of Funds. (1) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(2) The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter shall be [~~is~~] identified.

(3) The local unit shall disburse incentive funds during the month for which the funds are requested.

(4) The local unit shall maintain records to document that each participant devotes sufficient hours performing fire service training to qualify him for incentive pay.

Section 5. Local Audits. (1) The local unit may be audited by the department pursuant to established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. These [~~Such~~] records shall include, but are not limited to, the following:

(a) Books of original entry;
(b) Source documents supporting accounting transactions;
(c) The general ledger;
(d) Subsidiary ledgers;
(e) Personnel and payroll records;
(f) Cancelled checks; and
(g) Any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission.

Section 6. Application Forms for Incentive Pay. (1)(a) Application for incentive pay.

**COMPILER'S NOTE: The following application is new material in this administrative regulation. However, since lines are included in the application, we are not underlining this new material.**

APPLICATION FOR INCENTIVE PAY

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601
(502) 564-3473

CHECK ONE
( ) New Application
( ) Renewal
Paid Firefighters
Incentive

ATTENTION: Please type or print the following information.

1. Applicant:
   City of:
   Date:
   County of:
2. Name of Fire Department:
   F.D.#:
3. Name of Fire Chief:
   Phone:
4. Name and Title of the Authorized Fiscal Office of Local Unit:
   Name:
   Title:
5. Enter on the attached sheet each full-time paid firefighter's name, their position (i.e., chief, lieutenant, engineer, driver, etc.) within the fire agency and their annual base salary, if applicable.
6. Name of Chief Executive Officer of Jurisdiction:

I hereby certify that the information contained herein is true and correct to the best of my knowledge. In addition, if this application is approved, I accept and will comply with provisions of KRS Chapter 95A and the general conditions contained herein, and such further rules, regulations and policies as may be reasonable prescribed by the Commission on Fire Protection Personnel Standards and Education.

Signature of Chief Executive Officer:
Date Signed:
Title:
Subscribed and sworn before me this _____ day of _____, 19___.
My commission expires:
Notary Public:

XXXXXXXXXXXXXXXX

(b) Paid Firefighters Foundation Incentive Program Form. To be completed and filed with application form in (1)(a).

PAID FIREFIGHTERS FOUNDATION INCENTIVE PROGRAM

TO BE RETURNED WITH APPLICATION

Local Unit Name:
Local Unit #:
Fire Department Name:
Fire Department #:
Quarter ending:

| Name of Firefighter last name first | New X | Social Security Number | Date Employed | Annual Comp. | Total # Hours Annually | Assigned Duty Position |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |

XXXXXXXXXXXXXXXX

(2) For requesting funds from the Paid Firefighter's Foundation Incentive Program.

REQUEST FOR FUNDS PAID FIREFIGHTER'S
FOUNDATION INCENTIVE PROGRAM

RETURN TO:

Commission on Fire Protection
Personnel Standards and Education
1047 U.S. 127 South
Frankfort, KY 40601

Application #:

1A Fire Dept. Name:
1B Fire Dept. #:

INCENTIVE REQUEST

1. Requesting unit:
   Name:
   Address:
   City:
   State:
   Zip Code:
2. Funds requested for the month of:
3. Number of eligible firefighters:
4. Incentive pay funds requested:
5. Preceding month's incentive funds requested:
6. Preceding month's incentive funds paid out:
7. Difference between lines 5 and 6:
8. If difference exists, explain reason for shortage or overage in incentive pay funds or pension funds:

PENSION REIMBURSEMENT

9. Number of firefighters
   x HAZCERS 18.47% = $38.48 per person =
   x CERS 8.83% = $18.40 per person =
   x OTHER ____% = $___ per person =
   TOTAL PENSION FUNDS REQUESTED
10. Signature of Authorized Fiscal Officer:
    Title:
    Date:

IMPORTANT: Please report at the bottom of this form any change in the name, address or phone number for the Mayor, County Judge, Fire Chief or Fiscal Officer.

Change of Name, Address, Phone Number:

Name:
Address:
Phone Number:

_____ Mayor or
_____ County Judge
_____ Fire Chief
_____ Fiscal Officer

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: Wayne Jordan

(1) Type and number of entities affected: 100 + fire departments with paid firefighters or anticipating hiring firefighters.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: Savings of not mailing quarterly reports and annual renewal applications.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Elimination of annual renewal application (will remain eligible for incentive pay as long as firefighters participate in the program) and elimination of quarterly reports.

(2) Effects on the promulgating administrative body: Will not have to mail applications to already eligible departments annually and will not need to review or file annually or quarterly report.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: Saving cost of mailing.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Eliminating annual renewal and quarterly reports.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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. Eligibility for education incentive pay is the same for all paid firefighters.

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. Eliminates fiscal sections from having to apply annually for renewal to participate in firefighter education incentive pay and filing of quarterly reports.

(3) State the aspect or service of local government to which this administrative regulation relates. Fiscal section and fire departments.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of State Fire Marshal**
**(Proposed Amendment)**

**815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.**

RELATES TO: KRS 95A.040, 95A.262(3), (4) [~~17.250~~], 45A.080, 322.360

STATUTORY AUTHORITY: KRS 95A.260(1), 95A.262 [~~17.250(4)~~]

NECESSITY AND FUNCTION: KRS 95A.262 [~~17.250~~] requires that prior to any expenditures of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans shall [~~must~~] be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of this administrative regulation [~~these regulations~~] is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Center Fund. This amendment is necessary to comply with KRS Chapter 13A drafting rules as requested by LRC staff and to add the forms to apply for firefighters training facility grants.

Section 1. Definitions. (1) "Commission" [~~for the purpose of these regulations shall~~] means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(2) "Cost estimate" [~~for the purpose of these regulations shall~~] means an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It may [~~can~~] also mean the estimated cost of land or buildings to be purchased.

(3) "Quotations or bids" means it [~~for the purpose of these regulations~~] shall contain the same information as cost estimates.

Section 2. Eligibility. (1) To qualify to receive aid under the Firefighter Training Center Fund, fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments or groups or associations of fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, shall [~~must~~] maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding pursuant to this administrative regulation [~~these regulations~~] shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

Section 3. Participation Requirements. (1) An application as outlined in Section 5 of this administrative regulation [~~There~~] shall be submitted to the commission. The [~~an~~] application [~~which~~] shall contain, but not be limited to the following:

(a) A letter of application, containing a general statement of intent;

(b) A list of fire departments and agencies that will use the facility;

(c) A list of what is available to the applicant, such as land, free labor or materials, etc.; [~~and~~]

(d) The name of an agent or contact person;

(e) A drawing or sketch of the proposed training center, as well as building drawing if applicable; and

(f) A cost estimate [~~as stated in the definitions of these regulations~~].

(2) All applications shall comply with KRS 45.075 through 45.800 applicable to capital construction projects statutes and the requirements stated in subsection (1) of this section.

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than $10,000.

(b) Expenditures exceeding $10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the fire department and assure that purchases will be at the lowest cost.

(c) Capital Construction projects exceeding the cost of $25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding $50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.

(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall recommend to the State Fire Marshal which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) [~~No~~] Funds shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) If [~~When~~] expenditures are made, receipts for funds expended during each quarter shall be sent by the 15th of the following month. Receipts for January, February and March shall be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 5. Training Facility Grant Application Forms. (1) Training Facility Grant Application.

**COMPILER'S NOTE: The following application is new material in this administrative regulation. However, since lines are included in the application, we are not underlining this new material.**

TRAINING FACILITY GRANT APPLICATION

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601

ALL QUESTIONS MUST BE ANSWERED OR APPLICATION WILL BE REJECTED

Please type or print

Name of Requesting Agency:

Address:
City:
County:
Zip:
Contact Person:
Telephone Number:

Yes No 1. Does each department of the requesting agency maintain twelve (12) firefighters, one (1) chief and operate at least one (1) operational fire apparatus?
Yes No 2. Does each department of the requesting agency maintain a roster of a minimum of fifty (50) percent certified firefighters?
Yes No 3. If applicant is an organization, are all member departments aware of the application?
4. List all departments which will utilize the facility on a separate sheet.
5. Number of personnel utilizing facility?
6. Number of days the facility was used last year?
7. List departments and agencies utilizing facility last year on a separate sheet.
8. Nearest similar facility.
Yes No 9. Will your facility be available to other/all departments?
10. Explain on a separate sheet your facility maintenance funding method.
Yes No 11. Does requesting agency hold the title to the property? If no, please explain.
12. Location of facility.
13. List of completed projects on facility as of this date.

1._____ 2._____
3._____ 4._____

14. Please check the project this application is for:

_____ I Drill tower
_____ II Burn/smoke building
_____ III Drafting pit
_____ IV Multipurpose building
_____ V Special project

Yes No 15. Are blueprints or drawings available? If no, they must be submitted prior to disbursement of funds if your request is approved.
16. Estimated cost of this project:

I, the undersigned, hereby attest that all questions have been truthfully answered to the best of my knowledge. I have read and will comply with 815 KAR 45:050 and if reasonable progress is not made on the project granted, the grant is subject to forfeiture. I further attest that I have full authority to sign this document.

Signature:
Title:
Date:

(2) Quarterly Progress Report Form.

QUARTERLY PROGRESS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report
Title of Project:

Start report here (add continuation pages as needed)

Signature of Recipient:
Typed Name and Title of Recipient:
Date:

(3) Quarterly Financial Status Report Form.

QUARTERLY FINANCIAL STATUS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report

Monies Paid to: Amount Paid:

1. _____
2. _____
3. _____
4. _____
5. _____
Total Spent this Quarter:

I certify that to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

Signature of Authorized Certifying Official:
Typed Name and Title of Certifying Official:
Date:

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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

Contact person: Wayne Jordan

(1) Type and number of entities affected: 850 paid and volunteer fire departments.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review no change from past regulations.

TIERING: Is tiering applied? No. All fire departments apply for and participate in same way to obtain training center grants.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of State Fire Marshal**
**(Proposed Amendment)**

**815 KAR 45:060. Survivor benefits for death of a [~~paid~~] firefighter.**

RELATES TO: KRS Chapter 95A, 136.392 [~~61~~]

STATUTORY AUTHORITY: KRS 61.315(3)

NECESSITY AND FUNCTION: KRS 61.315 authorizes the payment of a survivor[~~'s~~] benefits of $50,000 [~~25,000~~] to the survivor[~~s~~] of a paid or volunteer firefighter who is killed in the line of duty after July 1, 1991. This administrative regulation [~~These regulations~~] establishes the procedures and criteria which shall be utilized to determine the eligibility of the firefighter's [~~survivors of a firefighter killed in the line of duty, to be paid the~~] survivor[~~'s~~] benefits. This administrative regulation applies to both paid and volunteer firefighters. Administrative regulation 815 KAR 45:040, Survivor benefits for volunteer firefighters, shall be repealed. This amendment is necessary to implement statutory changes and to bring the administrative regulation into technical compliance with KRS Chapter 13A.

Section 1. Definitions. [~~As employed in the regulation for determination of eligibility for payment of survivor benefits, the following words and phrases shall have the following meaning:~~]

(1) " [~~(3)~~] Active member" means a paid firefighter [~~. For the purpose of these regulations, an active firefighter is one~~] that is listed on the department roster and participates in the department's training programs and other various activities.

(2) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(3) " [~~(5)~~] Death in the line of duty" [~~. For the purpose of these regulations, death shall~~] means death which occurs as a direct result of an act or acts in the performance of duty as described in these regulations and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of said duties or the results of illness, sickness or injury caused by the performance of said duties which result in death within twelve (12) months of such stated activities as described elsewhere in these regulations providing death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the above stated causes, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.

(4) "Child or children" means stepchildren, legally adopted children and children born posthumously.

(5) " [~~(1) Paid~~] Firefighter" as defined in KRS 61.315(1). [~~Paid firefighter for the purpose of these regulations shall mean every paid firefighter who is employed by any county, city, metro government, fire district as established through KRS Chapter 75, or a fire department recognized pursuant to KRS 17.250 which operates and maintains a fire department on a nonprofit basis in the interest of the health and safety of the inhabitants of the Commonwealth.~~]

(6) " [~~(4)~~] Heart or circulatory malfunction" [~~. For the purpose of these regulations, heart or circulatory malfunction shall~~] means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as described in these regulations.

(7) " [~~(2)~~] Performance of duty" means [~~:~~] A [~~paid~~] firefighter [~~shall be deemed to be~~] acting in the performance of his duties for the purpose of these regulations when engaged in activities of firefighting, fire drills or other related training; rescue or emergency activities; provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.

(a) These activities shall include repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department upon the authorization of the chief of the fire department or other authorized person in charge or while answering any emergency calls for any purpose or while riding in or upon the fire or emergency apparatus which is owned or used by the fire department or while performing other duties of such fire department as authorized by the jurisdiction which the department serves.

(b) These activities shall include organized meetings related to the fire service and travel to and from such meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.

Section 2. Requirements for Eligibility. (1) [~~(6)~~] Survivors. Benefits shall be paid to the surviving spouse, surviving children or both; or the surviving parents, as set forth in KRS 61.315(2). [~~; if no surviving spouse, then payment shall be made to the surviving children; if no surviving spouse or children, the benefit shall be paid to any dependent parents of the deceased. Benefits paid under these statutes do not accrue to the decendent's estate. If decedent is not survived by an eligible survivor, no benefits shall be paid under KRS 61.315.~~]

(2) [~~(7)~~] Heart or circulatory malfunction limitations. If [~~After July 15, 1984, should~~] an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits if the firefighter is [~~should he/she be~~] killed in the line of duty.

(a) If the firefighter has [~~Should he/she have~~] been medically diagnosed a having had or receiving any medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's [~~their~~] doctor[~~,~~] that the firefighter [~~individual~~] has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the [~~their~~] eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the [~~should said~~] firefighter is [~~be~~] killed in the line of duty.

(b) If [~~After July 15, 1984, should~~] an active member of a fire department is [~~be~~] medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, their survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of said statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(3) [~~(8)~~] Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for this [~~such a~~] request. If [~~Should~~] an autopsy is [~~be~~] performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished to the commission.

[~~(9) Dependents. "Child or children" includes stepchildren, legally adopted children, children born posthumously, naturally born children and children born through medical assistance. "Parent" includes stepparents and parents by adoption.~~

~~(10) Commission. Commission for the purpose of these regulations means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.~~]

Section 3. [~~2.~~] Application. (1) Upon the death in the line of duty, as defined by this administrative regulation [~~these regulations~~], of a paid firefighter, the fire department of which the firefighter [~~he~~] was a member at the time of death shall notify, in writing, the commission's administrator in the Office of State Fire Marshal, of the death. Upon receipt of the [~~such~~] notification, the administrator shall send the [~~proper~~] forms outlined in Section 7 of this administrative regulation to the notifying fire department in care of the chief as well as the [~~proper~~] forms to the known survivors of the deceased firefighter.

(2) Upon receipt of the forms furnished by the commission, the chief and survivors or their representative shall properly fill out the said forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly filled out forms, a committee of the commission appointed by the chairman of the commission shall review the applications and forward them with their recommendations to the full commission for determination of eligibility. If [~~Should~~] there are [~~be any~~] questions about the application, the committee and the administrator may [~~has the authority to~~] seek clarification of the questions on behalf of the commission.

Section 4. [~~3.~~] Certification of Payment of Benefits. Upon certification of survivorship rights to the [~~Paid~~] Firefighter's Death Benefit, the sum of $50,000 [~~25,000~~] shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and [~~:~~] the treasurer shall [~~issue a check for the above amount and~~] transmit the [~~said~~] check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. [~~4.~~] False and Fraudulent Statements. Any person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds which were received through these false or fraudulent statements or representations.

Section 6. [~~5.~~] Appeals. (1) [~~No~~] Decisions of the commission [~~which~~] negatively affecting [~~affects~~] the eligibility of a survivor to be a recipient of the fund shall not be final until said survivor shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. Said appeal shall be to the circuit court of the circuit where the controversy originated.

Section 7. Application Forms for Reporting Firefighters Death. (1) Form for notifying commission of the death of a firefighter.

**COMPILER'S NOTE: The following application is new material in this administrative regulation. However, since lines are included in the application, we are not underlining this new material.**

Commission on Fire Protection
Personnel Standards and Education
1047 U.S. 127 South
Frankfort, KY 40601

For Commission Use Only
Case No._____
S.S. No._____
Date_____

REPORT OF FIREFIGHTERS DEATH

1. Name and address of public safety agency, organization or unit in whose service death occurred (include zip code).

PART I. NOTICE OF LINE OF DUTY DEATH OF FIREFIGHTER

2. Name of deceased firefighter:
3. Date of injury:
4. Date of death:
5. S.S. No.
6. Deceased firefighter's last mailing address:
7. Name of decedent's superior officer:
8. Supervisor's area code and phone number:
9. Was injury contributed to by:

| | Yes | No | Unknown |
|---|---|---|---|
| Firefighter's intentional misconduct? | ___ | ___ | ___ |
| Firefighter's intent to bring about his own death? | ___ | ___ | ___ |
| Firefighter's voluntary intoxication? | ___ | ___ | ___ |
| Any person who may be entitled to benefit? (Attach explanations for any "yes" answers) | ___ | ___ | ___ |

10. Firefighter's employment status when injury occurred
___Full-time ___Part-time ___Volunteer ___Other (Specify)

PART II. PLEASE CHECK AND ATTACH ALL APPLICABLE REPORTS RELATING TO THE DIRECT CAUSE OF OR PROXIMATE CAUSE OF DEATH.

11. Certified copy of original reports
Medical report (attending physician) _____
Coroner's report _____
Autopsy report _____
Investigation report* _____
*If no investigation report exists, please provide statement of circumstances leading to death.

12. If known, give name and address of witness(es) with whom firefighter was involved when injured, if not provided in the above

reports.

PART III. INFORMATION CONCERNING POSSIBLE CLAIMANTS (Provision of this information does not constitute finding for or against an interim payment of benefits or final award of benefits).

13. Names, relationship and address of persons in precedence order and applicability categorized as follows:

| | Name (last-first-middle) | Date of birth | Address (include city-state-zip) |
|---|---|---|---|
| Surviving Spouse | | | |
| Children | | | |
| Surviving Dependent Parent(s)* | | | |

*List surviving dependent parents only when neither spouse nor children survive decedent.

14. Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian)

GUARDIAN(S) NAME ADDRESS (include zip code) GUARDIAN FOR (list children)

PART V. CERTIFICATIONS. A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

15. Employing organization - To the best of my knowledge and belief, the above stated information is true and complete.

TYPED NAME AND TITLE SIGNATURE DATE

ORGANIZATION ADDRESS (include zip code) PHONE NO.

16. Is there a retirement/disability board which will consider the facts of this case in order to determine eligibility for other benefits? Yes___ No___
If yes, please give address and telephone number of the board.

REMINDER: ARE ALL REQUIRED DOCUMENTS ATTACHED (SEE PART II)?

(2) Form for notifying commission of claim for survivor benefits following the death of a firefighter.

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601

For Commission Use Only
Date received_____

CLAIM FOR SURVIVOR BENEFITS

1. Name of deceased (last-first-middle):
2. Social Security #:
3. Date of injury:
4. Date of death:
5. Name and address of (public safety agency, organization or unit in whose service death occurred)

INSTRUCTIONS: A claim should be filed when an eligible firefighter (regardless of employment status) has died of a personal injury sustained in the line of duty. WHO SHOULD FILE: (1) surviving spouse (complete Part I); (2) child or children of the deceased (complete Part II); and (3) dependent parent or parents of the deceased (complete Part III). All claimants must complete Part IV. When documentation is required, a property certified copy of the record will suffice.

PART I. INFORMATION ON SURVIVING SPOUSE. When at the time of the firefighter's death, the firefighter was survived by a husband or wife, this Part should be completed. If there are qualified children of the deceased, Part II must also be completed. (Attach marriage certificate, divorce decree or separation agreements as applicable to martial relationship with decedent.)

6. Name (last-first-middle):
7. Social Security No.:
8. Mailing address (include zip code):
9. Martial status at time of firefighter's death:
___Married ___Separated ___Divorced ___Other
Attach necessary documentation such as marriage certificate, divorce decree or separation agreement.
10. Was the firefighter married at any time to anyone else?
___Yes ___No ___Unknown
If yes, submit documents to show dissolution of prior marriage such as death certificate.
11. Does deceased firefighter have any eligible children from previous marriage? ___Yes ___No
If yes, include under Part II or explain on separate sheet and attach to this form.

PART II. INFORMATION ON CHILDREN. If the firefighter was survived by a natural, illegitimate, adopted or posthumous child or stepchild (or children) who, at the time of the firefighter's death, was eighteen (18) years of age or under; over eighteen (18) and a student; or over eighteen (18) and incapable of self-support because of physical or mental disability, this Part should be completed. Attach copy of birth certificates, adoption papers or other evidence of parent-child relationship, as appropriate.

12. Name (last-first-middle):
Date of birth:
Address (if not same as item #8):

Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian of each child.) (Legal guardianship documents will be required in the event benefits will be awarded to children under guardianship.)

GUARDIAN(S) NAME ADDRESS (include zip code) GUARDIAN FOR (list children)

PART III. OTHER CLAIMANT. If at the time of death, the firefighter was not survived by a spouse or children and there was a parent or parents of the deceased dependent upon him for support, this Part should be completed. Attach a copy of the firefighter's birth certificate or other evidence of parent-child relationship as appropriate.

NOTE: IF ANSWER TO EITHER ITEM 13 OR 14 IS YES, DO NOT COMPLETE PART III.

13. Is there a surviving spouse of deceased firefighter? ___Yes ___No
14. Is there a surviving child or children of deceased firefighter?

___Yes ___No

CLAIMANT(S) IN THE CIRCUMSTANCE OF NO SURVIVING SPOUSE OR CHILDREN

15. Name (last-first-middle):
    Mailing address (include zip code):
16. Statement of dependent parents where there is no surviving spouse or children.
    A. Amount contributed by firefighter toward claimant's support during the twelve (12) months prior to injury or death: $_____
    B. Claimant's earnings from his employment during the twelve (12) months prior to firefighter's injury or death: $_____
    C. Other income of claimant from all other sources during the twelve (12) months prior to firefighter's injury or death: $_____
       (1) Investments: $_____
       (2) Pensions: $_____
       (3) From people other than deceased firefighter: $_____
       (4) Other sources: $_____

PART IV. STATEMENTS AND CLAIM. All claimants are required to complete this Part. The purpose of this claim is to establish survivorship eligibility and assert the rights to benefits. The filing of this claim does not constitute a determination by the Commission on Fire Protection Personnel Standards and Education that benefits will or will not be awarded to the claimant(s). This claim may be prepared by a person acting on behalf of the claimant(s) such as a parent, legally appointed guardian, other legal representatives, or duly designated representatives of the claimant(s). Evidence of authority to represent claimant(s) should be attached.

17. Statement of financial need: Has an immediate financial hardship been incurred as a result of this death? ___Yes ___No If yes, provide a brief statement of financial circumstances and need. If more room is needed, use additional sheets.

I hereby make claim for compensation for myself as, or in behalf of, (spouse, child/children or other eligible claimants) listed above, as a result of the death of the above named firefighter who sustained fatal injury in the line of duty. Every statement and information set forth above is true to the best of my knowledge and belief.

A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

Signature of claimant or authorized representative:
Date:
Phone number:

Section 8. 815 KAR 45:040, Survivor benefits, death of volunteer firefighter, is hereby repealed.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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

Contact person: Wayne Jordan

(1) Type and number of entities affected: 850 paid and volunteer fire departments.

(a) Direct and indirect costs or savings to those affected: The firefighter fund will pay $50,000 to family survivors in the event of the death of a paid or volunteer firefighter in the line of duty.

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: Firefighter death report and survivors death benefit claim report.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Unable to determine depending on the number of firefighters killed in the line of duty.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions.

(6) Any additional information or comments: Per KRS 61.315 changed $25,000 benefit to $50,000 by 1992 legislative session.

TIERING: Is tiering applied? No. Tiering all firefighters must be treated the same; all risks are same.

## CABINET FOR HUMAN RESOURCES
## Department for Social Insurance
## Division of Management and Development
## (Proposed Amendment)

### 904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administra-

tive regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, [~~job opportunities and basic skills (JOBS) program participation,~~] cooperation in child support enforcement activities, strikers and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(2) "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(3) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(4) "Principal wage earner" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for AFDC benefits based on the deprivation of unemployment.

(5) "Prior labor market attachment" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for AFDC benefits based on the deprivation of unemployment.

(6) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

[~~(1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.~~

~~(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.~~

~~(3) "Case manager" means the Department for Social Insurance (DSI) individual who:~~

~~(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;~~

~~(b) Aids the JOBS participant by brokering services for the participant;~~

~~(c) Identifies and resolves barriers to the extent possible; and~~

~~(d) Delivers JOBS related services to the participant.~~

~~(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.~~

~~(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self support.~~

~~(6) "Target population" means that group composed of each individual who:~~

~~(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;~~

~~(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;~~

~~(c) Is a custodial parent under the age of twenty-four (24) who:~~

~~1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or~~

~~2. Had little or no work experience in the preceding year; or~~

~~(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.~~]

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 3. Enumeration. (1) Each person included in the AFDC case shall furnish his Social Security card or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security card or apply for a number shall result in the ineligibility of the person whose Social Security number is not verified.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. [~~2.~~] Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship. AFDC shall be provided only to:

(a) Citizens;

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 5. [~~3.~~] Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall meet the definition of deprivation as specified in Section 1 of this administrative regulation. [~~be deprived of parental support of a natural or adoptive parent or care due to:~~

~~(a) Death;~~

~~(b) Continued absence from the home;~~

~~(c) Physical or mental incapacity; or~~

~~(d) Effective October 1, 1990, unemployment.~~]

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved. [~~Continued absence from the home.~~]

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) [~~(a)~~] To be considered deprived due to absence, [~~eligible for AFDC,~~] a needy child shall be physically separated from the parent and:

(a) [~~1.~~] The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) [~~2.~~] The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) [~~(b)~~] Absence may be voluntary or involuntary.

(a) [~~1.~~] Voluntary absence includes:

1. [~~a.~~] Divorce;

2. [b.] Legal separation;
3. [c.] Marriage annulment;
4. [d.] Desertion of thirty (30) days or more;
5. [e.] Forced separation of seven (7) days or more; or
6. [f.] Birth out-of-wedlock.

(b) [2.] Involuntary absence includes:

1. [a.] Commitment to a penal institution for thirty (30) days or more;
2. [b.] Long-term hospitalization;
3. [c.] Deportation; or
4. [d.] Single parent adoption.

(3) [(c)] A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

Section 8. Deprivation Due to [(3)] Incapacity. [(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.]

(1) [(b)] Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;
(b) Social; and
(c) Economic. [all medical, social, and economic factors involving a particular claimant.]

(2) [(c)] If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the [a] parent's inability to support or care for the child.

(a) [1.] Incapacity exists in a [each] case when the following criteria are met:

1. [a.] It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:
a. [(i)] Present at the time of application; and
b. [(ii)] Which has continued or is expected to last for a period of at least thirty (30) calendar days.

2. The thirty (30) day period [This] may include a period in which the claimant is undergoing:
a. Planned diagnostic studies; or
b. Evaluation of rehabilitation potential; and

3. [b.] It is determined by nonmedical evaluation that the [such] defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(b) A determination regarding incapacity shall be made by:

1. Field staff if the criteria specified in 904 KAR 2:040, Section 3(2) is met; or

2. The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(c) [2.] Factors to be considered by the medical review team in making the medical determination shall include:

1. [a.] The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

2. [b.] Competent medical testimony relevant to:
a. [(i)] Whether a physical or mental defect, illness or impairment exists;
b. [(ii)] Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and
c. [(iii)] Whether the defect, illness or impairment is likely to last thirty (30) days. [The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.]

(d) [3.] Factors to be considered in making the nonmedical evaluation shall include:

1. [a.] The claimant's:
a. [(i)] Age;
b. [(ii)] Employment history;
c. [(iii)] Vocational training;
d. [(iv)] Educational background; and
e. [(v)] Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

2. [b.] The extent and accessibility of employment opportunities available in the claimant's area of residence.

(e) [4.] In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of disabled individuals shall be taken into account; and

1. [a.] Available printed materials that provide information regarding available employment opportunities shall be researched;
2. [b.] The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and
3. [c.] The claimant shall be referred, if necessary, for further appraisal of his abilities.

(f) [5.] A written report shall be made of the determination under this subsection.

(g) [6.] Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to [(4)] Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(2) The determination of the [(a)] principal wage earner (PWE) shall include the following: [. The PWE is the parent who earned the greater amount of income in the twenty four (24) months immediately preceding the month of application.]

(a) [1.] If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

b. [2.] If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) [(4)(b)] of this section.

(c) [3.] Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The [4.] PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) [(b)] Unemployment. A parent shall be considered to be unemployed if:

(a) [1.] Employed less than 100 hours in a calendar month; or

(b) [2.] Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) [(c)] Prior labor market attachment (PLMA) shall be established [.

1. PLMA is met] if the parent:

[a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;]

(a) Attests to an employment history meeting the definition in Section 1(5) of this administrative regulation;

(b) [b.] Within twelve (12) months prior to application, received unemployment compensation; or

(c) [c.] Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) [2.] In determining whether or not criteria in subsection (4)[(c)1a] of this section is met, the following shall be taken into consideration:

(a) [a.] Participation in Community Work Experience Program (CWEP) or Work Incentive Program (WIN) prior to October 1, 1990, and in the Job Opportunities and Basic Skills (JOBS) Program [after October 1, 1990,] shall be considered as earning an income in determining PLMA.

(b) [b.] Full-time attendance, as defined by the school or institution, [in educational activities] may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) [c.] Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(6) [(d)] Restrictions. Unemployment shall not exist if the PWE:

(a) [1.] Is on strike;

(b) [2.] Is temporarily unemployed:

1. [a.] Due to weather conditions or lack of work;

2. [b.] If there is a job to return to; and

3. [c.] Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) [3.] Is unavailable for full-time employment;

(d) [4.] Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) [5.] Has not met the criteria of unemployment for at least thirty (30) days;

(f) [6.] Has not applied for unemployment benefits, if potentially eligible;

(g) [7.] Is not:

1. [a.] Registered for work under Section 8 of this administrative regulation; or

2. [b.] Subject to JOBS, as specified in 904 KAR 2:370 [under Section 9 of this regulation]; or

(h) [8.] Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC- UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 10. [4.] Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed; [father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin and first cousin once removed.]

(2) A relative [Also relatives] of the half-blood;

(3) [and] Preceding generations [as] denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) [grand, great, great great or great great great;] A stepfather, stepmother, stepbrother, stepsister;

(5) [.(3)] Any person listed in subsections (1) through (4) of this section [above] if the alleged father [parent] has had paternity established through the administrative determination process as specified in subsection (9) of this section. [An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;

3. Immigration records;

4. Naturalization records;

5. Church documents, such as baptismal certificates;

6. Passport;

7. Military records;

8. U.S. Census records; or

9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.]

(6) An adoptive parent, [(4) Adoptive parents as well as] the natural and other legally adopted child [children] and other relative[s] of the adoptive parent [such parents].

(7) The [(5)] husband or wife of any person[s] listed in subsections (1) through (6) of this section, [above] even if the marriage may have terminated, providing termination occurred after the birth of the child.

(8) [(6)] If the specified relative [parent] continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;

(b) Attendance at boarding school;

(c) College or vocational school;

(d) Emergency foster care; or

(e) Short visits with friends or relatives.

[Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).

~~(2) A child may be eligible to age nineteen (19) if:~~
~~(a) A full-time student in a secondary school; or~~
~~(b) The equivalent level of vocational or technical training; and~~
~~(c) Expected to complete the program prior to or during the month of their 19th birthday.~~
~~(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.~~
~~(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:~~
~~(a) Official school or training program vacation;~~
~~(b) Illness;~~
~~(c) Convalescence; or~~
~~(d) Family emergency.]~~

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity is limited to situations in which the following types of evidence are present:
(a) A birth certificate listing the alleged parent; or
(b) Legal documents such as:
1. Hospital records;
2. Juvenile court records;
3. Wills; and
4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.
(2) Rebuttal of administrative paternity may occur if:
(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
(b) The parent or caretaker relative provides a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
(3) Presence of the sworn statement or affidavit specified in subsection (2)(b) of this section will serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity will not be acknowledged.

Section 12. [~~6.~~] One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).
(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 13. [~~7.~~] Strikers. (1) A family shall be ineligible for benefits for any month in which the [~~natural or adoptive~~] parent, with whom the child is living is, on the last day of the [~~such~~] month, participating in a strike; and
(2) A specified relative other than the parent shall be ineligible [~~No individual shall be considered eligible~~] for benefits for any month if, on the last day of the [~~such~~] month, the relative [~~such individual~~] is participating in a strike.
[~~(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.~~]

Section 14. [~~8.~~] Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the Department for Employment Services (DES) if:
(a) He resides in a non-JOBS county; or
(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370 [~~Section 9(1)(c) of this regulation~~].
(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered for or is participating in JOBS.

Section 15. [~~9.~~] Job Opportunities and Basic Skills (JOBS) Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370. [~~(1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:~~
~~(a) Is a child who:~~
~~1. Is under age sixteen (16); or~~
~~2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);~~
~~(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;~~
~~(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;~~
~~(d) Is sixty (60) years old or older;~~
~~(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;~~
~~(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;~~
~~(g) Is working at least thirty (30) hours per week;~~
~~(h) Is pregnant and the child is expected to be born within the following six (6) month period;~~
~~(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;~~
~~(j) Is a full-time VISTA volunteer.~~
~~(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV agency assures that child care will be guaranteed.~~
~~(2) Volunteers. All persons in active JOBS counties as specified in subsection (1) of this section may volunteer to participate in the JOBS program.~~
~~(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.~~
~~(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.~~
~~(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.~~
~~(3) Components. All JOBS counties shall offer the following~~

services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(e) Job search which provides group and individual assistance and training with job seeking activities;

(f) On the job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(g) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(4) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(5) Self initiated JOBS activities. Self initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self initiated education or training for their JOBS activity. The participant shall be attending:

(a) A JTPA funded training program; or

(b) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) An associate degree program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education.

(6) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(7) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(8) Good cause.

~~(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:~~

~~1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;~~

~~2. Necessary child care is not available;~~

~~3. Employment would result in a net loss of cash income;~~

~~4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;~~

~~5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;~~

~~6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;~~

~~7. Illness of another household member requiring the presence of the participant;~~

~~8. The participant is temporarily incarcerated;~~

~~9. Discrimination by an employer based on age, race, sex, color, disability, religious beliefs, national origin or political beliefs occurs;~~

~~10. Work demands or conditions render continued employment unreasonable. Examples are:~~

~~a. Consistently not being paid on schedule; or~~

~~b. The presence of a risk to the individual's health or safety;~~

~~11. Wage rates are decreased subsequent to acceptance of employment;~~

~~12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;~~

~~13. A household emergency occurs, such as:~~

~~a. Death of a member of the immediate family;~~

~~b. Entry into a spouse abuse center;~~

~~c. Natural disasters;~~

~~d. Court appearance;~~

~~e. Victim of crime; or~~

~~f. Flooded basement; or~~

~~14. The participant receives temporary military assignment.~~

~~(b) The duration of good cause criteria may vary according to individual circumstances.~~

~~(9) Sanctions.~~

~~(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:~~

~~1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;~~

~~2. Fails without good cause to participate in the program;~~

~~3. Refuses without good cause to accept employment; or~~

~~4. Terminates employment or reduces earnings without good cause.~~

~~(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:~~

~~1. The participant is excluded from JOBS activities and services;~~

~~a. For the first failure to comply, until the failure to comply ceases;~~

~~b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and~~

~~c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.~~

~~2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.~~

~~3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.~~]

Section 16. [~~10.~~] Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving AFDC based on the following voluntary absence deprivation factors:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section [~~(1)~~] inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities. This includes, but is not limited to:

(a) Identifying the absent parent;

(b) Providing information to assist in the location of the absent parent;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency. [~~and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.~~

~~(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.~~]

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child[~~(ren)~~] adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

[~~(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.~~]

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made, includes, but is not limited to, the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent of alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; and

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the absent or alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of AFDC; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or

3. Good cause does not exist.

(c) Advise the specified relative in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) The relative shall be ineligible for benefits; and

(b) The agency shall attempt to obtain a protective payee to administer the AFDC payment on behalf of the child.

(8) If, after the exclusion from the grant for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Add the specified relative to the case effective with the date the individual states he will cooperate;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. [~~11.~~] Potential Entitlement for other Programs. (1) An applicant or recipient [~~All applicants or recipients~~] shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements results in ineligibility for AFDC.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

[~~Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.~~

~~Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.~~

~~Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.~~]

Section 18. [~~15.~~] Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the AFDC program, with the exception of JOBS participation, are being incorporated effective May 1, 1993. These forms include:

(a) PA.1C Supplement D, revised 3/92;

(b) PA-121, revised 8/87;

(c) PA-125, revised 6/83;

(d) PA-125 Supplement A, revised 6/83;

(e) PA-125 Supplement B, revised 12/82; and

(f) PA-511, revised 10/92. [~~Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.~~]

(2) Material incorporated by reference 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
FONTAINE BANKS, Secretary

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 9, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1993, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact

person: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: This amendment removes information regarding the JOBS Program from 904 KAR 2:006 and places it in 904 KAR 2:370. Removal of this information will not affect any entities.

(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: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

**CABINET FOR HUMAN RESOURCES**
**Department for Social Insurance**
**Division of Management and Development**
**(Proposed Amendment)**

**904 KAR 3:060. Administrative disqualification hearings and penalties.**

RELATES TO: KRS 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied. [~~This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.~~]

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

(3) An act of intentional program violation shall consist of having intentionally:

(a) Made a false or misleading statement;

(b) Misrepresented facts;

(c) Concealed facts;

(d) Withheld facts; or

(e) Committed any act that constitutes a violation of:

1. 7 USC 2011 to 2029;

2. 904 KAR Chapter 3; or

3. Any state statute relating to:

a. The use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of:

(i) Food stamp coupons; or

(ii) An authorization to participate card (ATP).

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) Did not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 14.

(5) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 15.

(6) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(8) Provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(9) If a hearing is postponed, the time limits specified in subsection (7) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(a) The date, time, and place of the hearing;

(b) The charge against the household member;

(c) A summary of the evidence;

(d) How and where the evidence may be examined;

(e) A warning that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(f) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(g) A warning that a determination of intentional program violation shall result in:

1. A six (6) month disqualification for the first violation;

2. A twelve (12) month disqualification for a second violation; and

3. Permanent disqualification for the third violation; and

4. A statement of which penalty is applicable to the case scheduled for a hearing;

(h) A listing of the household member's rights as contained in 904 KAR 3:070, Section 14;

(i) A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(j) If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

(5) If the household member or its representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated when the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) If the household member is found to have committed an intentional program violation but, a hearing official later determined that the household member or representative had good cause, as defined in 904 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(8) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(9) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has signed a waiver of right to an administrative disqualification hearing; or

(c) The individual has signed a disqualification consent agreement; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation as specified in Section 1 of this regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence;

2. The state administrative regulations; and

3. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) An official report shall be retained by the cabinet.

(a) The report shall contain:

1. The substance of what transpired at the hearing;

2. All papers and requests filed in the hearing proceeding.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) If the individual is no longer participating, the notice shall inform the individual that the period of disqualification shall be deferred until the individual:

(a) Applies for food stamps; and

(b) Is determined eligible for program benefits.

(4) A notice shall be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(5) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing.

(2) The cabinet shall:

(a) Ensure that:

1. The appropriate field services supervisor reviews the evidence against the household member suspected of the IPV; and

2. A decision is obtained that the evidence warrants scheduling a disqualification hearing.

(b) Provide written notification to the household member suspected of IPV that the member can waive his right to an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to sign a disqualification consent agreement in a case of deferred adjudication.

(2) The cabinet shall use a disqualification consent agreement for a case in which a determination of guilt is not obtained from a court because the accessed individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) A penalty is assessed for an individual:

(a) Found by an administrative disqualification hearing to have committed an intentional program violation; or

(b) Who has signed a waiver of the right to an administrative disqualification hearing; or

(c) Who has signed a disqualification consent agreement; or

(d) Found guilty by a court of appropriate jurisdiction.

(2) An individual listed in subsection (1) of this section shall be ineligible to participate for:

(a) Six (6) months for the first violation;

(b) Twelve (12) months for the second violation; or

(c) Permanently for the third violation.

(3) The disqualification period for a nonparticipant shall be deferred until he applies for and is determined eligible for program benefits.

(4) Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household.

(5) A court ordered disqualification may be imposed separate and apart from any action taken by the cabinet.

(a) An individual found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court.

(b) If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section.

(6) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

(7) The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household.

(a) The remaining household members shall agree to make restitution in accordance with the procedures set forth in 904 KAR 3:050, Section 4.

(b) Allotment reduction shall be imposed on the household's monthly allotment if:

1. The household does not agree to make restitution; or

2. After having agreed to make restitution fails to do so.

(8) The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, revised 1/93 [~~6-91~~], is necessary: [~~for waiver of administrative disqualification hearing.~~]

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing.

(2) Form FS-80, Supplement A (revised 1/93), is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing.

(3) [~~(2)~~] Form FS-111, revised 6-91, is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) [~~(3)~~] These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, Secretary

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 9, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1993, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: The amendments to this administrative regulation do not change current policy. Therefore, no recipients will be affected by the amendments to this regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation pertains to administrative disqualification hearings and penalties as prescribed by 7 CFR 273.16.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with the Food Stamp Act of 1977, as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Proposed Amendment)**

**905 KAR 6:060. CSBG audit specifications.**

RELATES TO: KRS 273.410 to 273.453

STATUTORY AUTHORITY: KRS 194.050, 273.448

NECESSITY AND FUNCTION: 42 USC 9901-9912 - "Community Services Block Grant Program" (CSBG), enacted August 13, 1981, authorizes block grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt administrative regulations necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to establish the criteria and methodology that shall be used to measure compliance with applicable state and federal laws and administrative regulations.

Section 1. CSBG Audit Guide. (1) The Cabinet for Human Resources hereby adopts, by reference, the Community Services Block Grant Audit Specifications, dated November 5, 1992 [~~August 6, 1991~~], as the document to be used in auditing state agency expenditures of federal CSBG funds and CSBG funds expended through contract services. The guide makes provision for the performance of an audit in three (3) basic areas of interest:

(a) Compliance audit;

(b) Federal financial participation audit; and

(c) Statement of compliance and fraud, abuse or illegal acts.

(2) The CSBG audit specifications shall be available for public inspection and copying during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: February 1, 1993

FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are 23 federally funded community action agencies throughout the Commonwealth. The regulation incorporates by reference the 1990-91 CSBG program audit requirements to be used to measure compliance with applicable state and federal laws and regulations.

(a) Direct and indirect costs or savings to those affected: The only direct or indirect cost or savings to the community action agencies is a revision in the incorporated audit specifications that allows costs incurred by the agencies for interest on borrowed working capital required for the sole purpose of operating a CSBG program.

1. First year: The only first year direct or indirect cost or savings to the community action agencies is a revision in the incorporated audit specifications that allows costs incurred by the agencies for interest on borrowed working capital required for the sole purpose of operating a CSBG program.

2. Continuing costs or savings: The only continuing direct or indirect cost or savings to the community action agencies is a revision in the incorporated audit specifications that allows costs incurred by the agencies for interest on borrowed working capital required for the sole purpose of operating a CSBG program.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the amended regulation only incorporates the federal audit requirements revised 11-5-92.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the amended regulations only incorporates the federal audit requirements revised 11-5-92.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the amended regulations only incorporates the federal audit requirements revised 11-5-92.

1. First year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the amended regulations only incorporates the federal audit requirements revised 11-5-92.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social Services as the amended regulations only incorporates the federal audit requirements revised 11-5-92.

3. Additional factors increasing or decreasing costs: There are no

additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amended regulations only incorporate the federal audit requirements as revised on 11-5-92.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. Tiering was not applied as existing community action agencies are the only entities in the state that are eligible to receive community services block grant funds pursuant to PL 97-35 and its successors.

## CABINET FOR HUMAN RESOURCES
### Department for Social Services
### (Proposed Amendment)

**905 KAR 6:070. Program state plan for CSBG.**

RELATES TO: KRS 273.410 to 273.453, 42 USC 9901-9912

STATUTORY AUTHORITY: KRS 194.050, 273.453, 42 USC 9901-9912

NECESSITY AND FUNCTION: 42 USC 9901-9912 - "Community Services Block Grant Program," enacted August 13, 1981, authorizes grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt administrative regulations necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to implement the Kentucky Community Services Block Grant Program which shall comply with applicable state and federal laws and regulations.

Section 1. (1) The "Community Services Block Grant Program Plan for the Commonwealth of Kentucky" for fiscal year 1993 [~~1992~~], is hereby adopted by reference as the plan for utilization of CSBG funds. The plan includes:

(a) Assurances as required by federal law and regulations;

(b) Provisions for use of funds by community action agencies;

(c) Programmatic considerations such as geographic areas to be served;

(d) Client eligibility, and complaint procedures; and

(e) Fiscal considerations such as administration, required match, and allocation formula.

(2) The "Community Services Block Grant Program Plan" may be reviewed, inspected or copied during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: February 1, 1993

FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are 23 federally funded community action agencies throughout the Commonwealth. The regulation incorporates by reference the federal fiscal year 1993 plan for the use of the community services block grant to provide support services to aid in the amelioration of poverty in communities.

(a) Direct and indirect costs or savings to those affected: A minimum 20% local match in the form of nonfederal cash, in-kind contributions or certified expenditure is required under the plan in accordance with state and federal law.

1. First year: An estimated $7.4 million will be available for services under this block grant of which a minimum 20% will be a local match.

2. Continuing costs or savings: There are no continuing costs or savings as by law, each year's block grant plan is considered new.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs or affects upon competition. Only the community actions agencies are eligible for funds under this grant as specified in state and federal law.

(b) Reporting and paperwork requirements: The community action agencies prepare and submit a local plan and budget to receive funds; monthly billings and reports of clients served and outcomes; and a plan of correction for any deficiencies cited in cabinet monitoring of compliance. Programmatic and fiscal documentation are maintained to meet federal and state requirements.

(2) Effects on the promulgating administrative body: Under this plan, there is no change in the manner in which this block grant is administered.

(a) Direct and indirect costs or savings: There are no new direct costs or savings to the Department for Social Services under this block grant plan.

1. First year: 5% or less of the block grant funds are used for administrative expenses at the state level. Thus, agency administrative expenditures (estimated) will be less than $310,000.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The DSS prepares an annual plan to receive this block grant. Semiannual status reports are prepared and submitted to the Legislative Research Commission as required by state law. Federal reports of expenditures and services are prepared and submitted as specified including the use and distribution report. Documentation and audits are prepared and maintained as specified in federal and state law.

(3) Assessment of anticipated effect on state and local revenues: The DSS does not anticipate an effect on state and local revenues beyond the receipt and use of this block grant for the amelioration of poverty.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the

plan was developed and reviewed including public review in accordance with the requirements specified in federal and state laws.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No tiering was applied as the community action agencies are the only entities eligible to apply for the use of this block grant in accordance with federal and state laws.

**CABINET FOR HUMAN RESOURCES**
**Department for Social Services**
**(Proposed Amendment)**

**905 KAR 8:090. Personal care assistance services.**

RELATES TO: KRS 205.900 through 205.920

STATUTORY AUTHORITY: KRS 194.050, 205.910, 205.920

NECESSITY AND FUNCTION: KRS 205.910 requires the Cabinet for Human Resources to establish an eligibility standard for personal care assistance services which shall take into consideration the unique economic and social needs of severely physically disabled adults. The Department for Social Services has promulgated administrative regulations pursuant to KRS 205.920 that shall enable provisions of KRS 205.905-205.920, concerning personal care assistance services to be implemented.

Section 1. Definitions. (1) The definition of "cabinet" is governed by KRS 205.900(1).

(2) The definition of "evaluation team" is governed by KRS 205.900(2).

(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).

(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).

(5) The definition of "secretary" is governed by KRS 205.900(5).

(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).

(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.

(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.

(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Division of Aging Services.

(10) "Authorized representatives of the cabinet" means the Director of the Division of Aging Services or official designee.

(11) [~~(14)~~] "Contract agency" means the agency with whom the Cabinet for Human Resources has contracted to administer the personal care attendant program.

(12) [~~(11)~~] "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(13) [~~(12)~~] "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which addresses the "unique economic needs of severely physically disabled adults" as governed by KRS 205.910(1).

(14) [~~(13)~~] "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.

(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.

(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.

(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.

(18) "Personal care attendant" means a person who provides personal care attendant services.

(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:

(a) Activities of daily living;

(b) Instrumental activities of daily living;

(c) Routine bodily functions care (bowel and bladder);

(d) Turning;

(e) Repositioning; and

(f) If necessary, ambulation and emergency procedures.

(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(21) "Program coordinator" means a person who shall meet the following minimum requirements:

(a) Completion of two (2) years (fifty-four (54) semester hours) of college; or

(b) Work experience involving interviewing, community services work, administrative work, reviewing, monitoring, training or determining eligibility for human services programs shall substitute for the required college education on a year-for-year basis.

(22) [~~(21)~~] "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.

(23) [~~(22)~~] "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Participant Responsibilities. The participant's responsibilities shall include:

(1) Recruiting attendants;

(2) Screening attendants;

(3) Interviewing attendants;

(4) Selecting attendants;

(5) Hiring attendants;

(6) Instructing attendants on specific personal care duties;

(7) Supervising attendants;

(8) Evaluating attendant care;

(9) Firing attendants;

(10) Discussing and coming to agreement with each attendant about what services shall be provided;

(11) Keeping records and reporting to the agency attendant hours [~~time~~] worked for payment to the attendant;

(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;

(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a signed [~~written~~] agreement between the disabled adult and the attendant; and

(14) Coordinating with the program coordinator the aspects of program requirements.

Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:

(1) Entering into written agreement for terms of work as specified by the participant.

(2) Performing the tasks agreed on between the participant and attendant.

(3) Performing the tasks as instructed by the participant.

(4) Reporting to work as scheduled.

(5) Maintaining the privacy and confidentiality of the participant.

(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.

(7) Maintaining a list of emergency numbers.

(8) Attending attendant training related to specific care needs.

(9) Keeping a daily record of hours worked and services rendered.

(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.

(11) Meeting with participant and program coordinator for monitoring and coordinating the aspects of the program [~~regarding the participant's progress and the state of the relationship between the participant and the attendant~~].

(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.

(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:

(1) Locating severely physically disabled persons who may be eligible for participation.

(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.

(3) Assisting the participant in how to conduct an interview and screen prospective attendants.

(4) [~~Assisting in the recruitment and referral of attendants to participants.~~

~~(5)~~] Assisting in or arranging for the training of attendants if necessary.

(5) [~~(6)~~] Reviewing with the participant the evaluation completed by the evaluation team.

(6) [~~(7)~~] Assisting the participant in developing a work agreement between the disabled adult and attendant.

(7) [~~(8)~~] Monitoring the aspects of the program with [~~progress of~~] each participant on a quarterly basis.

(8) [~~(9)~~] Assisting the participant in finding back-up attendants for emergencies or regular attendant's time off.

(9) [~~(10)~~] Assisting in the recruitment and referral of personal care attendants when requested.

[~~(11) Maintaining a list of qualified personal care attendants.~~]

(10) [~~(12)~~] Assuring that participants receive training in record-keeping and tax responsibilities related to services.

(11) [~~(13)~~] Completing ten (10) hours of initial care management training and [~~any~~] follow-up training required by the cabinet.

Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:

(1) Employing or contracting with an evaluation team consisting of three (3) individuals:

(a) [~~A program coordinator or~~] Social worker;

(b) An occupational or physical therapist; and

(c) A registered nurse.

(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.

(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.

(4) Employing or contracting for the services of a program coordinator.

Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:

(1) Completing the initial evaluation of applicants.

(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.

Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:

(1) Implement the personal care attendant program according to a plan approved by the Division of Aging Services.

(2) Assume fiscal accountability for the state funds designated for the program.

(3) Provide necessary administrative support personnel within the contract agency office.

(4) Provide an appeals procedure and hearing process in compliance with the requirements of 905 KAR 8:140.

(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.

(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.

(7) Review [~~all~~] recommendations of the evaluation team regarding applicant eligibility and participant services.

(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.

(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.

(10) Submit monthly program reports to the Division of Aging Services.

(11) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 8. Division of Aging Services Responsibilities. The responsibilities of the Division of Aging Services shall include:

(1) Provide a format for the area plan of requirements for the Personal Care Attendant Program.

(2) Review proposed plans submitted by contract agencies to administer the personal care attendant program.

(3) [~~(2)~~] Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Division of Aging Services shall include the following:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan.

(4) [~~(3)~~] Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the division.

(5) Develop and revise program and fiscal requirements.

(6) [~~(4)~~] Allocate available funding.

(7) [~~(5)~~] Advocate for program expansion.

(8) [~~(6)~~] Provide technical assistance.

Section 9. Eligibility. To be eligible for participation in the personal attendant care services program a person shall meet:

(1) The physical eligibility standard which requires that a person shall:

(a) Be eighteen (18) years old or older;

(b) Be severely physically disabled as defined by KRS 205.900(6);

(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;

(d) Reside, or through this program be able to reside, in a noninstitutional setting;

(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;

(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;

(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;

(h) Work with the program coordinator in establishing a personal care plan as the basis of agreement between the disabled person and his attendant; and

(i) Be capable of preparing attendant payroll reports and required employer tax statements.

(2) The income equity standards shall be determined by the following formula contained on a form prescribed by the cabinet:

(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.

(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.

(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.

(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.

(e) If the remaining income equals the cost of care the client is ineligible.

(f) If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.

Section 10. Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:

(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).

(2) The required contribution shall be paid to the attendant.

(3) It shall be the responsibility of the qualified agency to collect the contribution.

Section 11. Acceptance for Services. (1) A client shall be accepted for service when:

(a) It is determined that he is eligible to participate in the program; and

(b) Funds are available.

(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis. Clients who have been determined eligible for, receive personal care attendant services, and relocate to another personal care attendant service area shall be considered on a first-come basis and placed at the top of the waiting list for service.

(3) If several potential participants make application at the same time, an equitable procedure for selecting applicants shall be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Division of Aging Services.

Section 12. Relocation for Education or Training. (1) Clients who are eligible for and receive personal care attendant services but go to another personal care attendant service area to complete a training or educational course shall remain a client of the personal care attendant program district of origin when the following conditions are met:

(a) The client considers the personal care attendant program district of origin to be his place of residence; and

(b) The client's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving personal care attendant program district shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The personal care attendant program district of origin shall retain responsibility for payment of subsidies for the duration of the educational or training course and when other eligibility requirements are met.

(4) The receiving district shall forward copies of reports to the district of origin.

(5) The district of origin shall be responsible for payment of subsidies, monthly programmatic and financial reports.

Section 13. [~~12.~~] Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.

(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.

(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.

(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.

(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.

(6) The qualified agency shall be notified in writing as to the final determination.

(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.

(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.

Section 14. [~~13.~~] Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:

(1) The maximum hourly rate for direct personal attendant care shall be established by the Division of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).

(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.

(3) A special night rate may be negotiated when:

(a) A participant does not require an attendant during the day;

(b) A participant does not need direct personal attendant care services from this attendant;

(c) Or to provide for caregiver respite service.

(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.

Section 15. [~~14.~~] Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:

(a) Prescreening information form;

(b) Application;

(c) Income eligibility form (updated annually);
(d) Evaluation team report;
(e) Evaluation team findings and recommendations (updated annually);
(f) Annual reassessment;
(g) Authorization for extraordinary medical expenses (if applicable);
(h) [(g)] Employee tax agreement; and
(i) [(h)] A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.

(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made available to the Division of Aging Services by the contract agency.

Section 16. [15.] Suspension of Services. Suspension of services shall occur for the following reasons:

(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.

(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.

(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.

(4) Participant is unwilling or unable to submit required employer taxes.

(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.

(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.

(7) Participant expires or is admitted to a long-term care facility.

(8) Participant requests suspension of services.

Section 17. [16.] Request for Fair Hearing. The applicant or participant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 905 KAR 8:140.

Section 18. [17.] Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance program shall be 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 40601. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sue Tuttle

(1) Type and number of entities affected: The type and number of entities affected are approximately 200 severely physically disabled adults aged 18 and over.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

1. First year: There will not be any direct and indirect costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings to the affected entities as the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department provides personal care assistance services.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

1. First year: There will not be any direct or indirect cost or savings during the first year for the Department for Social Services as the proposed regulations only clarify and correct terminology in the existing regulations.

2. Continuing costs or savings: There will not be any continuing cost or savings to the Department for Social Services as the proposed regulations only clarify and correct terminology in the current regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the DSS because the proposed regulations only clarify and correct terminology in the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only clarify and correct terminology in order to improve the existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap or duplicate the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes the statewide procedures for the Personal Care Assistance Program and is applicable to all applicants and contractors.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:028. Other laboratory and x-ray services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.30, 493, 42 USC 1396(d)
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 provisions relating to other laboratory and x-ray services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and medically needy.

Section 1. Covered Services. (1) Laboratory services provided by a participating independent laboratory shall be limited to those procedures for which the laboratory is certified under Medicare when prescribed by a physician or dentist.

(2) X-ray services (radiological services which include but are not limited to x-rays, ultrasound, computer assisted tomography and magnetic resonance imaging) shall be limited to those procedures provided by a facility licensed to provide radiological services and which meets the requirements of 42 CFR 440.30 as limited herein:

(a) The facility shall participate in the Medicare Program;

(b) The procedures shall be ordered by a licensed physician, oral surgeon or dentist;

(c) The services shall be provided under the direction or supervision of a licensed physician; and

(d) The facility shall meet the requirements of 42 CFR Part 493 with regard to laboratory certification, registration or other accreditation as appropriate.

Section 2. The amendments to Section 1 of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992 [~~July 1, 1988~~].

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: January 28, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: All other laboratory and x-ray services providers that are licensed to provide radiological services and meet the requirements of 42 CFR 440.30.
(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: Budget neutral.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This amendment increases the recipient's freedom of choice of providers for an already covered service.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:029. Payments for other laboratory and x-ray services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.30, 493, 42 USC 1396(d)
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 method of determining amounts payable by the cabinet for other laboratory and x-ray services.

Section 1. Laboratory Services. The cabinet shall reimburse participating independent laboratories, outpatient surgical clinics, renal dialysis centers, and outpatient hospital clinics for covered services rendered on the basis of the allowable payment rates set by Medicare.

Section 2. X-ray Services. Covered x-ray services (radiological services) provided to eligible Medicaid recipients in accordance with the limitations described in 907 KAR 1:028 shall be paid for at usual and customary charges up to sixty (60) percent of the fixed upper

limit per procedure for physicians.

Section 3. [2.] The amendments to Section 2 [1] of this administrative regulation shall be effective with regard to services provided on or after December 1, 1992 [July 1, 1988].

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: January 28, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: All other laboratory and x-ray services providers that are licensed to provide radiological services and meet the requirements of 42 CFR 440.30.
(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: Budget neutral.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:031. Payments for home health services.**

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.70, 447.325, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services (effective July 1, 1992 using cost data submitted by the home health agency provider on the annual Medicaid home health agency cost report), taking into consideration the upper limit shown in Section 2 of this administrative regulation and the various policies and guidelines specified in the Cabinet for Human Resources Title XIX Home Health Reimbursement Manual[, revised July 1, 1991, which is hereby incorporated by reference. The Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost].
(a) A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual.
(b) [;] The cost containment incentive payment shall not be subject to retrospective settlement.
(2) Payments made at the interim rate (except for incentive payments) shall be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this administrative regulation. The Medicaid final rates (except for incentive payments) shall not exceed federally established upper limits for Medicare.
(3) The Cabinet for Human Resources Title XIX Home Health Reimbursement Manual, revised February 1, 1993, is incorporated by reference.
(a) The Home Health Reimbursement Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.
(b) A fee shall be charged for the Home Health Reimbursement Manual not to exceed the approximate cost of copying and materials.

Section 2. Application of Upper Limits. (1) Publicly operated home health agencies (except new facilities as shown in Section 5 of this administrative regulation) shall be reimbursed at full allowable cost but shall be subject to the Medicare upper limits.
(2) Payments for [other] agencies other than publicly operated home health agencies (except payments for disposable medical supplies, as shown in Section 4 of this administrative regulation), and incentive payments as shown in Section 1 of this administrative

regulation shall not exceed a prospective upper limit which shall be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that are subject to the upper limits.

(3) [~~with~~] Facilities shall be placed in an urban or rural array based on the facility location for the following cost centers or disciplines: [~~skilled nursing,~~] speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services.

(a) The upper limit for the skilled nursing cost center shall be the Medicare upper limit. A determination as to whether a county is urban or rural shall be made taking into account usual standard metropolitan statistical areas.

(b) [~~The~~] Arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) shall be permitted.

(c) For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective with regard to services provided on or after July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment unless enrolled as a participating durable medical equipment provider.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Medicaid maximum rate not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate may be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1990. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Medicare maximum payment rate, the Medicaid maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. Requests for Reconsideration and Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) Request for reconsideration. A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement Operations.

(a) A [~~This~~] request for reconsideration shall be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. A [~~The~~] request for workpapers pertaining to audit adjustments to the home health agency's cost report shall not extend the forty-five (45) day time limit.

(b) If the home health agency operator [~~provider~~] fails to request reconsideration of [~~appeal~~] the audited cost report within the forty-five (45) days, the audited cost report shall be final and shall not be reopened [~~subject to reopening~~] unless the cabinet determines that there is suspected fraud or misrepresentation.

(c) A [~~The~~] request for reconsideration [~~appeal~~] shall indicate which adjustments the home health agency wishes reconsidered [~~to appeal~~]. A blanket request for reconsideration of [~~to appeal~~] the cost report shall not be accepted.

(d) Program/vendor conference. Upon receipt of the request for reconsideration [~~review~~], the division shall determine the need for a program/vendor conference and shall contact the home health agency to arrange a conference [~~if needed~~].

1. If a program/vendor [~~The~~] conference is [~~, if~~] needed, the conference shall be held within sixty (60) days of [~~the program's~~] receipt of the home health agency's request for review unless delayed due to extenuating circumstances.

2. Regardless of the program decision, the provider shall be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved in [~~and~~] the [~~program~~] decision.

(e) Following reconsideration [~~review~~] of the matter, the Director of the Division of Reimbursement Operations shall notify the home health agency in writing of the action to be taken by the division within twenty (20) days of receipt of the request for reconsideration [~~review~~] or the date of the program/vendor conference, whichever is later [~~except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue~~].

(f) The twenty (20) day period for notification in paragraph (e) of this subsection may be extended by the program when necessary to secure additional information for resolution of the issue.

(2) Appeal to the reimbursement review panel. If the Director of Reimbursement Operations' decision is unsatisfactory, the home health agency may [~~then~~] appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services.

(a) The reimbursement review panel [~~which~~] shall include one (1) member of the Division of Reimbursement Operations, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the commissioner, with the designated member to serve as chairperson.

(b) A [~~The~~] request for review by the reimbursement review panel shall [~~must~~] be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement Operations.

(c) A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of a written request for the appeal. The question shall be heard by the panel.

(d) The review panel shall issue a binding decision on the issue within thirty (30) days of the hearing unless the review panel determines that [~~of the issue, except that~~] additional time is needed [~~may be taken as necessary~~] to secure further information or clarification pertinent to the resolution of the issue.

(e) [~~In carrying out the intent and purposes of the program~~] The review panel may consider [~~take into consideration~~] extenuating circumstances to provide [~~which may be considered in order to provide for~~] equitable treatment and reimbursement of the provider.

Section 9. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit shall take precedence over the Medicare audit.

Section 10. Implementation Date. The amendments to this administrative regulation as shown herein shall be effective with regard to services provided on or after February 1, 1993.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 20, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on March 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 March 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 Graham

(1) Type and number of entities affected: All home health agencies participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: $277,328 (costs).

2. Continuing costs or savings: $277,328 (costs).

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:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:061. Payments for medical transportation.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid 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 medical transportation services.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions apply:

(1) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services.

(2) "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.

(3) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). The [~~Such~~] segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the cabinet.

(4) "Private automobile vendor" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program as a provider of ambulance services, if willing to accept private automobile vendor rates.

(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment [~~ordinarily~~] required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier shall [~~must~~] be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

(6) "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

Section 2. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate shall be the amount arrived at by combin-

ing the following component costs, as applicable:

(a) The base rate, which shall be set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 3. Commercial Transportation Vendors. The cabinet shall reimburse participating commercial transportation vendors at the normal passenger rate charged to the general public, taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time. The following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(1) The upper limit shall be the usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(2) The upper limit shall be the usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(3) The upper limit shall be the usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(4) The upper limit shall be the usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(5) The upper limit for trips of fifty-one (51) miles or above shall be the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Vendors. (1) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two (2) dollars per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three (3) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. Private automobile vendors shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile vendors shall be computed on the basis of a maximum allowable fee of five (5) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twelve (12) cents per mile plus two (2) dollars for waiting time would not equal the three (3) dollars or five (5) dollars allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in this section requires the cabinet to pay the amounts specified in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount shall be paid. Toll charges shall be reimbursable when incurred.

(4) Waiting time shall be a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pickup as though the client were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section.

Section 5. Noncommercial Group Carriers. The cabinet shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

Section 6. Specialty Individual Carriers. (1) Participating specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(2) [~~For services provided on or after July 1, 1990,~~] Program maximums are:

(a) Nonambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twenty-five (25) dollars for the first patient plus ten (10) dollars for each additional nonambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient(s) is transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twelve (12) dollars and fifty (50) cents per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b) of this subsection, mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles shall not be included when computing allowable reimbursement for mileage

(3) Reimbursement shall be made at specialty individual carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for

the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by participating specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 8. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner.

Section 9. Meals and Lodging. [~~Effective with regard to services provided on or after July 1, 1991,~~] The upper limits for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the cabinet shall be as follows:

(1) Standard area:

(a) Meals: breakfast - $4 per day; lunch - $5 per day; dinner - $11 per day; and

(b) Lodgings: actual cost up to $40 per day if known; if not known, $40 per day.

(2) High rate area:

(a) Meals: breakfast - $5 per day; lunch - $6 per day; dinner - $15 per day; and

(b) Lodgings: actual cost up to $55 per day if known; if not known, $55 per day.

Section 10. Limitations. Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the cabinet.

LEONARD E. HELLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: January 22, 1993

FILED WITH LRC: January 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: All specialty individual carriers participating in the Medicaid Program that wish to operate ramp equipped (rather than lift equipped) vans.

(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: Budget neutral.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## CABINET FOR HUMAN RESOURCES
### Department for Medicaid Services
### (Proposed Amendment)

**907 KAR 1:376. Incorporation by reference of the Hospital Services Manual.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.10, 42 USC 1396a, b, d, r-4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the hospital services component of the Medicaid Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Hospital Services Manual, revised January 1, 1993 [~~June 1, 1992~~], used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: January 28, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: All participating providers of hospital services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**
**(Proposed Amendment)**

**907 KAR 1:414. Incorporation by reference of the Dental Services Manual.**

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 44, 42 USC 1396a, b, c, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the dental services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Dental Services Manual, revised December 1, 1992 [~~October 1, 1989~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

LEONARD E. HELLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: January 22, 1993
FILED WITH LRC: January 28, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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: All participating providers of dental services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and**
**Mental Health Retardation Services**
**(Proposed Amendment)**

**908 KAR 2:040. Hospital district assignments.**

RELATES TO: KRS Chapter 202A, 210.300
STATUTORY AUTHORITY: KRS Chapter 202A, 210.300
NECESSITY AND FUNCTION: KRS 210.300 authorizes the Secretary for the Cabinet for Human Resources to designate hospital districts for the purpose of determining to which of the state institutions for the mentally ill the persons admitted from each county shall initially be sent. KRS Chapter 202A authorizes the transfer of a mentally defective or mentally ill inmate of any penal and correctional institution to the state hospital service designated by the secretary for that purpose.

Section 1. (1) The following state mental hospital districts are created. Except as otherwise provided herein, involuntarily and voluntarily hospitalized persons will be admitted to the state hospital serving the district in which they reside. In times of high patient count, state hospital directors may send patients to other state hospitals or to other hospitals in the district.

(2) District I: Western State Hospital, Hopkinsville, Kentucky, counties of: Allen, Ballard, Barren, [~~Breckinridge,~~] Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, [~~Grayson,~~] Hancock, [~~Hardin,~~] Hart, Henderson, Hickman, Hopkins, [~~Larue,~~] Livingston, Logan, Lyon, McCracken, McLean, Marshall, [~~Meade,~~] Metcalfe, Monroe, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, and Webster.

(3) District II: Central State Hospital, Anchorage, Kentucky, counties of: Bullitt, Breckinridge, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, [~~and~~] Trimble and Washington.

(4) District III: Eastern State Hospital, Lexington, Kentucky, counties of: Adair, Anderson, Bath, [~~Bell,~~] Boone, Bourbon, Boyd, Boyle, Bracken, [~~Breathitt,~~] Campbell, Carroll, Carter, Casey, Clark, [~~Clay,~~] Clinton, Cumberland, Elliott, Estill, Fayette, Fleming, [~~Floyd,~~] Franklin, Gallatin, Garrard, Grant, Green, Greenup, [~~Harlan,~~] Harrison, [~~Jackson,~~] Jessamine, [~~Johnson,~~] Kenton, [~~Knott, Knox, Laurel,~~] Lawrence, [~~Lee, Leslie, Letcher,~~] Lewis, Lincoln, McCreary, Madison, [~~Magoffin, Martin,~~] Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, [~~Owsley,~~] Pendleton, [~~Perry, Pike,~~] Powell, Pulaski, Robertson, [~~Rockcastle,~~] Rowan, Russell, Scott, Taylor, Wayne, and [~~Whitley,~~] Woodford[~~, and Wolfe~~].

(5) District IV: Appalachian Regional Healthcare Regional Medical Center, Hazard, Kentucky, counties of: Bell, Breathitt, Clay, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Rockcastle, Whitley, and Wolfe. [~~District I or III: residents of Marion, Nelson, and Washington Counties may be admitted to Western State Hospital, Hopkinsville, Kentucky, or Eastern State Hospital, Lexington, Kentucky.~~]

Section 2. Inmates of state penal and correctional institutions transferred to the Cabinet for Human Resources shall be admitted to the Kentucky Correctional Psychiatric Center La Grange, Kentucky.

Section 3. (1) Individuals charged with a felony and requiring psychiatric evaluation or treatment or both shall be admitted upon court order to the Kentucky Correctional Psychiatric Center, La Grange, Kentucky.

(2) Individuals admitted upon court order to the Kentucky Correctional Psychiatric Center, La Grange, Kentucky, may be transferred to other state institutions for the mentally ill or to a psychiatric unit in a local general hospital.

(3) Prompt notification of the court is required by KRS Chapter 202A, and sending of appropriate papers to the hospital is required by KRS Chapter 202A.

Section 4. A person may be admitted to a hospital other than the one in the district of his residence upon verbal or written permission of the Commissioner of the Department for Mental Health and Mental Retardation Services or his authorized designee. If verbal, then written confirmation shall follow within five (5) working days of the admission.

Section 5. A person may be admitted to a psychiatric unit in a local general hospital if [~~provided~~] that unit has had prior approval of the Commissioner of the Department for Mental Health and Mental Retardation Services or his authorized designee.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: January 28, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Ralph
(1) Type and number of entities affected: This regulation affects

16,062 persons with mental illness in the Eastern Kentucky counties included in the new hospital district. Also, based on hospital utilization studies, select counties previously designated to Eastern State and Western State Hospitals have been transferred to Central State Hospital to equalize the population burden on the other two hospitals.

(a) Direct and indirect costs or savings to those affected: There is no cost 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: This hospital will be managed and operated by Appalachian Regional Healthcare, Inc. (ARH) pursuant to the dictates of the GA as set forth in KRS 194.245(1) and KRS Chapter 47, Appendix A,1,G.56,g. There will be no reporting and paperwork requirements on the promulgating administrative body.

(2) Effects on the promulgating administrative body: It will enable inpatient psychiatric services to be more easily available to citizens who need those services. Presently they have to travel to Lexington, Kentucky, to receive services.

(a) Direct and indirect costs or savings: The 1992 GA appropriated $5 million for FY '93 and $6.3 million for FY '94 for the operation of this facility.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The 1990 regular session of the Kentucky GA, in Senate Bill 239, directed the cabinet to develop and operate a 100 bed psychiatric facility in eastern Kentucky. Throughout the session, the discussion related to the provision of services clearly related to Appalachian Regional Healthcare, Inc. (ARH) at Hazard being the designated site.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy 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 comments.

TIERING: Was tiering applied? No. This administrative regulation will be applied uniformly to all persons with mental illness.

## CABINET FOR HUMAN RESOURCES
## Department for Mental Health and Mental Retardation Services
## (Proposed Amendment)

**908 KAR 3:110. Policies and procedures of Central State Hospital.**

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194.050, 202A.191, [202A.196,] 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489

NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded person, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Central State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated November 15, 1991, and Volume II, Treatment Program, dated January 15, 1993 [~~November 15, 1991~~], are incorporated by reference.

Section 2. These policies and procedures are available for inspection or copy at the office of the Commissioner for the Department for [~~of~~] Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Central State Hospital, 10510 LaGrange Road, Louisville, Kentucky 40223.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: January 28, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: The group of persons affected are those 1800 admissions to Central State Hospital each year, and their families.

(a) Direct and indirect costs or savings to those affected: These regulations concern treatment and do not directly involve cost savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This has no effect on revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute 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.

TIERING: Was tiering applied? No. This regulation is applied equally to all clients of Central State Hospital.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by

agency staff and is federally mandated.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health and**
**Mental Retardation Services**
**(Proposed Amendment)**

**908 KAR 3:180. Policies and procedures of Oakwood.**

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489

NECESSITY AND FUNCTION: KRS 210.010, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Oakwood as set forth in Volume I, Organization, dated July 15, 1990; Volume II, Interdisciplinary Team Process, dated November 15, 1991; Volume III, General Facility, dated November 15, 1992 [~~1991~~]; Volume IV, Residents' Rights, dated May 1, 1988; and Volume V, Social Work Services/Resident Record Department, dated July 1, 1986, relating to the operation of Oakwood are incorporated by reference.

Section 2. These policies and procedures are available for inspection and copy at the office of the Commissioner of the Department for [~~of~~] Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Oakwood, U.S. 27 South, P.O. Box 1106, Somerset, Kentucky 42501.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: January 28, 1993

FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 18, 1993: Masten Childers II, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: Persons affected are 420 residents from counties throughout the state along with their families.

(a) Direct and indirect costs or savings to those affected: These policies and procedures affect the treatment and residential care of residents and do not directly relate to 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:

(2) Effects on the promulgating administrative body: There is no financial effect on the administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues. This has no effect on revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This is a regulation to incorporate manuals by reference.

TIERING: Was tiering applied? No. These policies and procedures are applied equally to all the residents of Oakwood.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

## PROPOSED REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 1993

### GENERAL GOVERNMENT CABINET
### Department for Commission on Human Rights

**104 KAR 1:080. Guidelines on fair housing.**

RELATES TO: KRS 344.010, 344.360 to 344.385, 344.600 to 344.680

STATUTORY AUTHORITY: KRS 13A.100, 344.190, 29 CFR 101.20 to 101.25

NECESSITY AND FUNCTION: This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions. (1) "Real estate operator" means in addition to the definition in KRS 344.010(8) any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

(2) "Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.

Section 2. Discriminatory Conduct Notice, Statements and Advertisements. Shall include:

(1) A written or oral notices or statements by a real estate operator.

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations.

(3) Notices, statements and advertisements include, but are not limited to:

(a) The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin.

(b) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons.

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin.

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin.

(4) "Prohibited words, phrases, symbols and visual aids" shall include those specified in 29 CFR 109.20(a) to (f).

(5) Use of advertising media shall comply with the provisions of 29 CFR 109.25(a) to (c).

(6) Occupancy restrictions because of familial status.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the size of bedrooms and unit, the age of children, the configuration of unit and other special circumstances.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Use of words, phrases, symbols, and visual aids, 29 CFR 109.20(a) to (f)".

(b) "Selective Use of Advertising Media or Content, 20 CFR 109.25(a) to (c)".

(2) This material may be inspected, copied, or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

1. (502) 595-4024;
2. (800) 292-5566;
3. (502) 595-4024, Ext. 251 (TDD), for the hearing impaired.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: All persons engaged in real estate and real estate-related transactions.

(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: Will reduce number of mail inquiries and telephone inquiries concerning requirements.

(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: No anticipated effect on state and local revenue is contemplated by the regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or government policy either conflicts, overlaps or duplicates the provisions of this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation was promulgated for the purposes of obtaining substantial equivalency from the U.S. Department of HUD.

TIERING: Was tiering applied? No. Tiering was not applied because this regulation has the same effect upon all entities subject to the fair housing laws. All persons subject to this administrative regulation must be treated equally. To differentiate would violate equal protection and due process.

## GENERAL GOVERNMENT CABINET
### Department for Commission on Human Rights

**104 KAR 1:090. Categories of protected persons required to fulfill reporting requirements.**

RELATES TO: KRS Chapter 344

STATUTORY AUTHORITY: KRS 13A.100, 344.050, 344.060, 344.070, 344.180, 344.190, 344.250, CCH OFCCP Compliance Manual Chapter 2, Section 2-160.4b, Paragraph 2164, 29 CFR 1602.13

NECESSITY AND FUNCTION: This administrative regulation establishes the standards for categorizing protected persons for the purposes of fulfilling reporting requirements. These categories have been utilized by the Equal Employment Opportunity Commission and the U.S. Department of Labor and are used by the Kentucky Commission on Human Rights.

Section 1. Definitions. (1) "American Indian" means all persons having origin in any of the original persons of North America including the natives of Alaska.

(2) "Asian or Pacific Islander" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. The Far East and Southeast Asia area including China, Japan, Samoa and Vietnam, Cambodia, Laos, and Thailand. The Indian Subcontinent includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhatan.

(3) "Hispanic" means all persons from Mexico, Puerto Rico, Cuba, and Central or South America. Persons who may have adopted the Spanish culture but are not otherwise of Spanish origin are to be treated according to their racial identity. Persons having their origin in the racial groups of Africa shall be excluded. Persons of Portuguese ancestry shall be classified as white-caucasians.

(4) "White or caucasian" means all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East. It shall not include persons having Spanish origins or cultures.

(5) "Black or African American" means all persons whose origins are the black racial groups of Africa and some people from South America, such as Brazil, Guyana, Surinam, or Trinidad.

(6) "Multiracial or biracial" means any persons whose parents are of different racial or national origins.

Section 2. Submission of Records. Employers, licensing agencies, labor organizations, financial institutions and real estate operators shall in categories established by Section 1 of this administrative regulation provide information upon receipt of a complaint of discrimination or to submit annual reports.

Section 3. A person or entity covered by KRS 344.010 to 344.500, 344.600 to 344.680 and 344.950 and required to make reports shall advise the persons whose racial or national origin status is identified that the information shall be treated confidentially and used for reporting purposes only.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the sville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: Employers, labor unions, licensing agencies, and financial institutions who are served a complaint by the KCHR.

(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: Will provide consistent descriptions of persons protected by the civil rights statutes.

(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: No anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were addressed.

(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 persons and entities subject to the Kentucky Civil Rights Act are affected equally.

## GENERAL GOVERNMENT CABINET
### Department for Commission on Human Rights

**104 KAR 1:100. Nondiscrimination on the basis of disability by a place of public accommodation, licensing and trade organizations.**

RELATES TO: KRS 344.050, 344.060, 344.120, 344.130, 344.500

STATUTORY AUTHORITY: KRS 12.290, 13A.100, 344.190(14), 28 CFR 36, 42 USC 12181

NECESSITY AND FUNCTION: This administrative regulation establishes standards and procedures promulgated by the U.S.

Department of Justice for the purpose of implementing Title III of the Americans with Disabilities Act of 1990. Title III prohibits discrimination on the basis of disability by private entities, in places of public accommodation, and requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities. In addition, examinations or courses related to licensing or certification for professional and trade purposes shall be accessible to persons with disabilities. These standards and procedures promulgated by the U.S. Department of Justice are enforced by the Kentucky Commission on Human Rights.

Section 1. Definitions. (1) "Place of public accommodation" means:

(a) A restaurant, bar, or other establishment serving food or drink;

(b) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(c) An auditorium, convention center, lecture hall, or other place of public gathering;

(d) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(e) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office or an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment.

(f) A terminal, depot, or other station used for specified public transportation;

(g) A museum, library, gallery, or other place of public display or collection;

(h) A park, zoo, amusement park, or other place of recreation;

(i) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(j) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(k) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation;

(l) A religious entity, religious organization, or place of worship is not a place of public accommodation.

(2) "Qualified interpreter" means an interpreter who is able to interpret effectively, accurately and impartially, using any necessary specialized vocabulary.

(3) "Service animal" means a guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of a person with a disability, including guiding persons with impaired vision, alerting persons with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

(4) "Specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Section 2. Readily Achievable Factors. In determining whether removal of barriers under Section 8 of this administrative regulation is readily achievable factors to be considered include:

(1) The nature and cost of the action needed;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness and the administrative or fiscal relationship of the site or sites in question to a parent corporation or entity;

(4) If applicable, the overall financial resources of a parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Section 3. Undue Burden - Factor. In determining whether removal of barriers under Section 8 of this administrative regulation would result in an undue burden, factors to be considered include:

(1) The nature and cost of the action;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources, legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity, with respect to the number of its employees; the number, type and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Section 4. Prohibited Activities - General. (1) A place of public accommodation shall not:

(a) Enter into any contractual, licensing, or other arrangement for the purposes of denying a person with a disability any participation in or benefit from the goods, services, facilities, privileges, advantages or accommodations;

(b) Provide a person with disabilities with services separate or different from other persons unless the action is necessary and is as effective as that provided to other persons without disabilities;

(c) Provide segregated accommodations and services to a person with a disability:

1. Instead, services shall be provided in the most integrated setting appropriate to the needs of the person.

2. A determination of whether a setting is appropriate and what the needs are shall be based on an objective evaluation which takes into account view of both parties.

(2) A place of public accommodation shall not deny services to any person or organization because of disability of a person with whom the person or organization is known to have a relationship association.

(3) A place of public accommodation shall not retaliate against a person because of that person's participation in opposing an activity under this regulation.

(4) A place of public accommodation shall not be required to provide services to a person with disabilities when that person poses a direct threat to the health or safety of others.

(5) A place of public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

Section 5. Eligibility Criteria. A place of public accommodation shall not impose surcharges or apply eligibility requirements that screen out or tend to screen out persons with disabilities from fully enjoying goods and services unless necessary for safe operation.

Section 6. Modification in Policies, Practices or Procedures. (1)

A place of public accommodation shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to persons with disabilities unless the place of public accommodations can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(2) A place of public accommodation shall modify policies, practices or procedures to permit the use of a service animal by a person with a disability.

(3) A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices in order to ensure that an equivalent level of convenient service is provided to persons with disabilities as is provided to others. If only one (1) out aisle is accessible and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

Section 7. Auxiliary Aids and Services. A place of public accommodation shall take those steps that may be necessary to ensure that no person with a disability is excluded, denied services, segregated or otherwise treated differently than other persons because of the absence of auxiliary aids and services unless the place of public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden.

Section 8. Removal of Barriers. (1) A place of public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature where such removal is readily achievable.

(2) Where a place of public accommodation can demonstrate that barrier removal is not readily achievable without undue hardship, i.e., much difficulty or expense, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if those methods are readily achievable.

Section 9. Examinations and Courses. Any organization that offers examinations or courses related to applications, licensing certification or credentialing for secondary or postsecondary education, professional or trade purposes shall offer examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements or administration.

Section 10. Material Incorporated by Reference. The following material is incorporated by reference:

(1) "Nondiscriminatory on the Basis of Disability by Public Accommodations and in Commercial Facilities" - 28 CFR 36.

(2) This material may be inspected, copied, or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) 595-4024, extension 251, (TDD), for the hearing impaired.

(c) The material may also be obtained directly from the Office of The Americans With Disabilities Act at (202) 514-0301 (voice), (202) 414-0381 (TDD), or (202) 514-6193 (electronic bulletin board) in the following alternative formats:

1. Large print;

2. Braille;

3. Electronic file on computer disk;

4. Audio-tape.

EDGAR S. GOINS, Chairperson

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Louisville office of the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Beverly L. Watts, Executive Director, Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly L. Watts

(1) Type and number of entities affected: All places of public accommodations in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were addressed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No administrative regulation, statute or government policy would conflict with the provisions of this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All places of public accommodation, trade agencies, and licensing agencies are equally affected.

## FINANCE AND ADMINISTRATION CABINET
## Department for Facilities Management

**200 KAR 6:045. Control of smoking in state-owned buildings and leased space occupied by executive branch agencies.**

RELATES TO: KRS 56.463

STATUTORY AUTHORITY: KRS 56.463(4), (8)

NECESSITY AND FUNCTION: KRS 56.463(4) vests in the Finance and Administration Cabinet the power to control the use of

any real property owned or otherwise held by the Commonwealth of Kentucky, or any state agency. KRS 56.463(8) authorizes the Finance and Administration Cabinet to adopt regulations necessary to govern, among other things, the control of property to which KRS 54.463 is applicable. This regulation provides for the control of cigars, cigarette, and pipe smoking by employees or visitors to state-owned or otherwise held real property under the control of the executive branch of Kentucky state government. The purpose of this regulation is to accommodate the needs of nonsmokers and smokers and, to the extent feasible, provide a designated smoking area in each building.

Section 1. Smoking of cigars, cigarettes, and pipes by employees and visitors shall be permitted in state-owned buildings or leased space, occupied by executive branch agencies, only in areas that are designated as smoking areas.

Section 2. Subject to the guidelines contained in Section 3 of this administrative regulation, the identification of appropriate smoking and nonsmoking areas shall be the responsibility of agency heads in central offices and by office heads in field offices. Employee suggestions and complaints shall be considered in designating smoking and nonsmoking areas. Smoking and nonsmoking areas shall be designated by appropriate signage as determined by the Finance and Administration Cabinet.

Section 3. (1) Except as provided in this section, in designating smoking and nonsmoking areas, agency and office heads shall not, unless special circumstances exist, designate as a smoking area, employee work stations/cubicles, elevators, hallways, stairwells, supply rooms, restrooms, conference rooms, reception areas, computer rooms, libraries, patient care areas, training rooms, and other areas of state-owned facilities or leased space occupied by executive branch agencies, which are used by all employees or visitors.

(2) A private office may be designated as a smoking area if devices designed to remove secondary smoke are installed, and smoking does not occur when nonsmokers are present.

(3) Smoking shall only be permitted in a public area of a state facility which has been specifically designated and appropriately marked as a smoking area.

(4) If there is space available for two (2) break rooms, one (1) may be designated for smoking and the other designated for nonsmoking.

(5) Separate smoking and nonsmoking areas shall be designated in state-owned or operated dining facilities, including the State Office Building and Capitol Annex Building cafeterias, and state resort park dining rooms.

Section 4. No executive branch employee shall be involuntarily assigned to a work station which has been designated a smoking area.

Section 5. Devices which are designed to remove secondary smoke from the air shall be installed in designated smoking areas.

W. PATRICK MULLOY, II, Secretary

APPROVED: January 26, 1993

FILED WITH LRC: January 26, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1993, at 1 p.m., in Meeting Rooms A, B, and C, at the Farnham Dudgeon Civic Center, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the commission in writing by March 18, 1993, five days prior to the hearing of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person attending 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 at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Bonnie Howell, Executive Director, Office of Management and Fiscal Affairs, Finance and Administration Cabinet, Room 265, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-7233.

REGULATORY IMPACT ANALYSIS

Contact person: Bonnie Howell

(1) Type and number of entities affected: Executive branch agencies occupying state-owned or leased property.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs for signs and smoke filtering air cleaners will be approximately $1,000 per designated smoking area. Savings - not identified at this time.

2. Continuing costs or savings: Cost for maintenance of smoke filtering air cleaners.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None anticipated.

(b) Reporting and paperwork requirements: Development of initial implementation plans and approach detailing designated smoking areas.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for signs and smoke filtering air cleaners will be approximately $1,000 per designated smoking area for space occupied by the Finance and Administration Cabinet.

2. Continuing costs or savings: Provide maintenance for smoke filtering air cleaners and additional signage as needed for space occupied by the Finance and Administration Cabinet.

3. Additional factors increasing or decreasing costs: None anticipated.

(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: Other alternative methods of implementing a smoking policy were considered by the cabinet, however, promulgating the policy as an administrative regulation was determined to be the best method of implementing such a policy.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(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? Yes. This regulation has been narrowly tailored to only apply to state-owned or leased properties under the control of the executive branch.

## KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

### 200 KAR 19:010. Payment of audit expenses by taxpayer.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.1223

NECESSITY AND FUNCTION: KRS 342.1223(2)(g) requires the Kentucky Workers' Compensation Funding Commission to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. KRS 342.1231(6) requires that all

expenses incurred by the Kentucky Workers' Compensation Funding Commission in conducting audits shall be paid in accordance with administrative regulations promulgated by the Kentucky Workers' Compensation Fund Commission. In addition to identifying those audit expenses that shall be paid by taxpayers, this administrative regulation specifies the manner in which audit expenses will be billed to taxpayers and paid by them. This administrative regulation also specifies the procedure by which taxpayers may protest audit expenses billed to them.

Section 1. Definitions. (1) The definition of "taxpayer" is governed by KRS 342.1231(7).

(2) "KWCFC" means the Kentucky Workers' Compensation Funding Commission.

Section 2. All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the taxpayer audited. Expenses to be reimbursed shall include the costs of meals, lodging, transportation, parking, incidentals (such as paper, fax, phone calls, baggage claims, tolls, tips and valet services when necessary) and the actual and total cost of all labor spent on the audits including time spent in advance preparation for the audit, time spent on travel, time spent on finalizing the audit and time spent on preparing written reports and correspondence to the taxpayer.

Section 3. KWCFC employees shall be reimbursed for all out-of-pocket expenses they incur while conducting audits. Except for air transportation, meals and mileage, expenses shall be reimbursed at actual cost to employees. Air fare shall be reimbursed at a rate not to exceed the cost of coach class. Meals shall be reimbursed at actual cost not to exceed forty-five (45) dollars per day. Mileage for the use of privately owned auto shall be reimbursed at the rate of twenty-two (22) cents per mile.

Section 4. Summarized bills consisting of totals for "labor", "travel" and "all other" expenses will be submitted to the taxpayer as soon as practicable after completion of the audit. Itemized bills will be available upon request. The taxpayer shall pay the bill for audit expenses within thirty (30) days of receipt of the summarized bills. In order to protest the bill or portion thereof, the taxpayer must pay the bill in full and file a written protest within thirty (30) days of receipt of the summarized bill. All protests under this section shall be governed by the procedures set out in KRS 342.1231.

WIN E. HILL, Chairman

APPROVED BY AGENCY: February 2, 1993

FILED WITH LRC: February 5, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 24, 1993, at 10 a.m. at the Kentucky Workers' Compensation Funding Commission Office, Conference Room, #42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 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: Maurice Turner, Kentucky Workers' Compensation Funding Commission, P.O. Box 1220, Frankfort, Kentucky 40602-1220, (502) 564-3505.

REGULATORY IMPACT ANALYSIS

Contact person: Maurice Turner

(1) Type and number of entities affected: This regulation will affect those parties providing workers' compensation coverage for injuries to employees in Kentucky. Presently there are 268 insurance companies, 220 self-insureds and 12 self-insureds groups providing such coverage in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Because of differences in size, location and complexity of operation, actual costs to regulated entities is unknown. Based upon present and projected audit staff levels, one-third of the insurance companies will be audited each year. Because individually self-insureds and self-insured groups are located in-state, the cost of their audits as compared to insurance company audits will be substantially less expensive.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Those parties wishing to protest audit expenses will be required to file a written protest.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None, because affected entities will be billed for all expenses of the audits.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: KWCFC will be required to prepare summarized bills and, if requested, itemized bills. This is identical to current practice.

(3) Assessment of anticipated effect on state and local revenues: State and local revenue will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The requirements set forth in this regulation define the most reasonable and efficient means by which the KWCFC will be reimbursed for the expenses it incurs in conducting audits.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known conflicts, overlaps or duplications.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Regulation applies equally to all regulated entities; no separate or multiple classes are involved. Tiering is therefore inappropriate.

## KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

**200 KAR 19:020. Assessments of insurance policies offering deductibles.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.1223

NECESSITY AND FUNCTION: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission to make and promulgate administrative regulations necessary or convenient to carry out and effectuate the purposes for which it was established. The purpose of this administrative regulation is to define the premium to be reported for special fund assessment purposes for a workers' compensation insurance policy written with a deductible.

Section 1. For an insurance policy providing Kentucky workers' compensation coverage written with a deductible, the special fund assessment shall be imposed upon the total premium amount that

would be charged without the deductible. This total premium amount shall include any experience modification adjustment and premium surcharge or discount that would have applied without the deductible.

WIN E. HILL, Chairman

APPROVED BY AGENCY: February 2, 1993

FILED WITH LRC: February 5, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 24, 1993, at 10:30 a.m. at the Kentucky Workers' Compensation Funding Commission Office, Conference Room, #42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 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: Robert L. Blackburn, Kentucky Workers' Compensation Funding Commission, P.O. Box 1220, Frankfort, Kentucky 40602-1220, (502) 564-3505.

REGULATORY IMPACT ANALYSIS

Contact person: Robert L. Blackburn

(1) Type and number of entities affected: 268 insurance companies writing Kentucky workers' compensation insurance and all employers in Kentucky who purchase workers' compensation insurance will be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: No direct or indirect costs or savings will be experienced by insurance companies. Employers who elect to purchase workers' compensation insurance with a deductible will be required to pay assessments for full exposure.

2. Continuing costs or savings: Those employers who purchase policies without deductibles will experience savings because they will not be required to pay that part of any assessment increase that would otherwise be necessary to offset the reduction in assessment collections resulting from unassessed deductibles.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation will insure that employers will pay their fair share of assessments. Without this regulation employers having deductible policies will gain an unfair competitive advantage over other types of coverage because their workers' compensation special fund assessments will be unfairly reduced. In addition, they will not be paying their proportional share of special fund assessments and commensurate disability payments to injured employees.

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None known.

(3) Assessment of anticipated effect on state and local revenues: The level of revenues from assessments will be maintained in an equitable manner.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known conflicts, overlaps or duplications.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. There are no multiple classes. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

### 201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS 324A.010, 324A.035, 324A.040

STATUTORY AUTHORITY: KRS 324A.010

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public.

Section 1. (1) "Board" means the Kentucky Board of Appraisers.

(2) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.

(3) "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals of one (1) to four (4) residential units in connection with federally and nonfederally related transactions.

(4) "Classroom hour" means fifty (50) minutes actual classroom instruction.

(5) "Federal financial institutions regulatory agencies" means the:

(a) Board of Governors of the Federal Reserve System;

(b) Federal Deposit Insurance Corporations;

(c) Office of the Comptroller of the Currency;

(d) Office of Thrift Supervision; and

(e) National Credit Union Administration.

(6) "Federally related transaction" means a real estate-related financial transaction that a federal financial institutions regulatory agency or the Resolution Trust Corporation:

(a) Engages in; or

(b) Contracts for; or

(c) Regulates; and

(d) For which it requires the services of:

1. Certified general real property appraiser;

2. Certified residential real property appraiser; or

3. Licensed real property appraiser.

(7) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.

(8) "Licensed nonfederal real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise nonfederally related transactions.

(9) "Real estate-related financial transaction" means any transaction that involves the:

(a) Sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(b) Refinancing of real property, or interests in real property; and

(c) Use of real property, or interests in property, as security for a loan or investment, including mortgage-backed securities.

(10) "Residential" means one (1) to four (4) residential units.

(11) "Transitional licensed real property appraiser" means an appraiser who has fulfilled the requirements for transitional licensure

established by the board to appraise real property in connection with federally and nonfederally related transactions.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 2,000 and 3,000.

(a) Direct and indirect costs or savings to those affected: There will be testing fees, initial application fees and annual renewal fees for participating appraisers.

1. First year: For the "federally related transaction" appraiser a testing fee of $200, an initial application fee of $200 and a $35 registry fee will be charged. For the licensed nonfederal real property appraiser an initial application fee of $100, a $100 testing fee if required and a 25 roster fee will be charged.

2. Continuing costs or savings: First year costs will continue to apply for new applicants and a $200 renewal fee plus a $35 registry fee will be charged for "federally related transaction" appraisers. A $100 renewal fee and a $25 roster fee will be charged for the "nonfederal" appraiser.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional costs.

(b) Reporting and paperwork requirements: Applications will be required along with supporting documents.

(2) Effects on the promulgating administrative body: All applications must be reviewed to determine qualifications, and the board will administer KRS Chapter 324A.

(a) Direct and indirect costs or savings: The cost of the test is $60 for preregistered applicants and $75 for walk-in applicants.

1. First year: Same costs as set out above.

2. Continuing costs or savings: The test charge will continue only for new applicants.

3. Additional factors increasing or decreasing costs: The requirement to license the "nonfederal" appraisers will probably double the workload of the board staff and necessitate the employment of at least one additional staff member.

(b) Reporting and paperwork requirements: This agency will administer and maintain records of the appraiser licensing and certification function.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since the "federally related transaction" appraisers program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None that this agency is aware of.

(a) Necessity of proposed regulation if in conflict: 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: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

### 201 KAR 30:020. Licensed nonfederal real property appraiser.

RELATES TO: KRS 324A.010, 324A.035, 324A.065

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with KRS Chapter 324A.

Section 1. The provisions of this administrative regulation shall not apply to persons who, prior to July 14, 1992, had performed appraisals of real property for ten (10) years.

Section 2. Qualifications for Licensure. (1) An applicant shall be licensed as a nonfederal real property appraiser if he has:

(a) A:

1. High school diploma; or

2. General equivalency diploma;

(b) Applied to the board for licensure; and

(c) Paid the fees required by KRS 324A.065(2).

(2) A licensed nonfederal real property appraiser shall not be required to meet the conditions established for the:

(a) Certification of:

1. General real property appraisers; or

2. Residential real property appraisers; or

(b) Licensure of licensed real property appraisers.

Section 3. Licensed Nonfederal Real Property Appraiser: Restrictions. A licensed nonfederal real property appraiser shall not perform real property appraisals of property that is the subject of a federally related transaction as defined by Section 1(6) of 201 KAR 30:010.

Section 4. Written and Oral Communications. (1)(a) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the statement set out in paragraph (b) of this subsection.

(b) "Not licensed or certified to perform appraisals in federally-related transactions."

(2) A written or broadcast communication shall include:

(a) Appraisal reports;

(b) Advertisements; and

(c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

(5) In a television advertisement, the statement shall:

(a) Be written;

(b) If in letters that are all upper case, be eighteen (18) scan lines in size; and

(c) If both upper and lower case letters are used:

1. For upper case letters, be twenty four (24) scan lines in size;

2. For lower case letters, be eighteen (18) scan lines in size; and

(d) Appear on the screen at least:

1. Three (3) seconds for the first line of lettering; and

2. One (1) second for each additional line of lettering.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of "nonfederal" appraisers in Kentucky. Our estimate is between 1,000 and 1,500.

(a) Direct and indirect costs or savings to those affected: There will be initial application fee and annual renewal fees for participating appraisers.

1. First year: An initial application fee of $100 and a $25 roster fee will be charged.

2. Continuing costs or savings: First year costs will continue to apply for new applications and a $100 renewal fee and a $25 roster fee will be charged.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional costs.

(b) Reporting and paperwork requirements: Applications will be required.

(2) Effects on the promulgating administrative body: All applications will be reviewed to insure qualifications are met and the board will administer KRS Chapter 324A.

(a) Direct and indirect costs or savings: The direct costs to administer this licensing procedure will be the cost of one clerical position, equipment and supplies.

1. First year: The costs set out above.

2. Continuing costs or savings: The costs set out above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This agency will administer and maintain records of the appraiser licensing function.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None were considered - this "nonfederal" appraiser program was fashioned after the federally mandated program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None to the board's knowledge.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

**201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.**

RELATES TO: KRS 324A.010, 324A.030, 324A.035, 324A.045, 324A.065

STATUTORY AUTHORITY: KRS 324A.030, 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures and to protect the public.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;

(2) Certified residential real property appraiser;

(3) Licensed real property appraiser; or

(4) Transitional licensed real property appraiser.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units regardless of transaction complexity or value.

(3) A licensed real property appraiser and a transitional licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less then $1,000,000;

(b) Complex, one (1) to (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by the provisions of 201 KAR 30:050 and 201 KAR 30:060; and

(2) Applies to the board on the "Appraiser License/Certification Application Form".

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (July, 1992) is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Appraisers, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed adminis-

trative 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate of appraisers in the "federally related transaction" is between 1,500 and 2,000.

(a) Direct and indirect costs or savings to those affected: There will be testing fees, initial application fees and annual renewal fees for participating appraisers.

1. First year: A test fee of $200 and an initial application fee of $200 will be charged. A $35 registry fee will be charged.

2. Continuing costs or savings: First year costs will continue to apply for new applicants and a $200 renewal fee will be charged along with the registry fee.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: Applications and supporting documents to verify education and experience will be required.

(2) Effects on the promulgating administrative body: All applications must be reviewed to determine qualifications, and the board will administer KRS Chapter 324A.

(a) Direct and indirect costs or savings: The cost of the test is $60 for preregistered applicants and $75 for walk-in applicants.

1. First year: The same costs as set out above.

2. Continuing costs or savings: The test charge will continue only for new applicants.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This agency will administer and maintain records of the appraiser licensing and certification function.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

**201 KAR 30:040. Standards of practice administrative regulation.**

RELATES TO: KRS 324A.035, 324A.050(10)

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards to protect the public.

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring compliance with the "Standards of Professional Appraisal Practice".

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a transitional licensed real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice".

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

Section 4. If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board.

Section 5. (1) "Uniform Standards of Professional Appraisal Practice (January, 1993)", Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference.

(2) It may be inspected, at the Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 1,500 and 2,000 for the federal fund related appraisals.

(a) Direct and indirect costs or savings to those affected: The current costs for the "Standards of Practice" book is $35. It is not a mandatory purchase.

1. First year: $35 for the "Standards of Practice" book.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Appraisal reports submitted for review must meet the "Standards of Practice" requirements.

(2) Effects on the promulgating administrative body: All appraisal reports submitted for review will be reviewed according to standards.

(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: This agency will

administer and maintain records of the appraiser licensing and certification function.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

**201 KAR 30:050. Examination, education and experience requirement.**

RELATES TO: KRS 324A.030, 324A.035, 324A.040, 324A.065

STATUTORY AUTHORITY: KRS 324A.035, 324A.040

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, licensed real property appraiser, or transitional licensed real property appraiser shall pass an examination that has been:

(1) Approved by the board; and

(2) Approved by the Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 165 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed:

(a) 105 hours of approved instruction, for certification prior to January 1, 1994; and

(b) 165 hours of approved instruction, for certification on or after January 1, 1994 if required by the Appraiser Qualifications Board.

(3) An applicant for the licensed real property appraiser examination shall have completed seventy-five (75) hours of approved instruction.

(4) An applicant to the board for a transitional license shall be issued a transitional license and shall meet the education requirement for licensure on or before the end of the second full year of license renewal or the transitional license shall automatically lapse.

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction may have been completed at any time prior to application for certification or licensure.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

(a) Influences on real estate value;

(b) Legal consideration in appraisal;

(c) Types of value;

(d) Economic principles;

(e) Real estate markets and analysis;

(f) Valuation process;

(g) Property description;

(h) Highest and best use analysis;

(i) Appraisal statistical concepts;

(j) Sales comparison approach;

(k) Site value;

(l) Cost approach; and

(m) Income approach, including:

1. Gross rent multiplier analysis;
2. Estimation of income and expenses;
3. Operating expense ratios; and
4. Direct capitalization;

(n) Valuation of partial interests;

(o) Appraisal standards and ethics; and

(p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

(a)1. It is approved by the board;

2. Complies with the provisions of this administrative regulation; and

(b) It is documented by the applicant;

(c) It is a course that requires at least fifteen (15) hours of instruction; and

(d) An applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

1. File a written request with the board for receipt of credit;

2. Document the appraisal courses taught, by title, date, place taught, length of course; and

3. Elect to receive credit for either the:

a. Classroom hour requirement; or

b. Experience requirement.

(3) The board shall grant credit for courses to an applicant in which:

(a) He received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions

(e) Proprietary schools; or

(f) Other providers.

(2) A provider shall be approved by the board if he:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser or a residential real property appraiser, an applicant shall have acquired two (2) calendar years appraisal experience.

(b) 1,000 hours of appraisal experience acquired within a calendar year shall constitute a calendar year appraisal experience.

(c) The two (2) calendar years appraisal experience may have been acquired in any two (2) calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(d) For certification as a general real property appraiser, fifty (50) percent of the appraisal experience shall consist of nonresidential appraisal experience.

(2) An applicant shall have acquired 2,000 hours of appraisal experience:

(a) Prior to initial licensure; or

(b) Within two (2) years of initial licensure, for transitional licenses.

(3)(a) An applicant shall verify experience credit by affidavit.

(b) The board may request documentation of appraisal experience, including reports or file memoranda.

(4) Acceptable appraisal experience shall include:

(a) Fee and staff appraisal;

(b) Ad valorem tax appraisal;

(c) Review appraisal;

(d) Appraisal analysis;

(e) Real estate counseling;

(f) Highest and best use analysis;

(g) Feasibility analysis or study; and

(h) Teaching of appraisal courses, as provided by this section.

Section 7. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:

(1) Complete ten (10) hours of approved continuing education each license year; and

(2) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for ten (10) hours:

(a) Of approved continuing education courses; or

(b) For participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated By Reference. (1) The following material is incorporated by reference:

(a) "Appraisal Education Provider Application Form" (1992);

(b) "Uniform Standards of Professional Appraisal Practice", (January 1993), Appraisal Standards Board of the Appraisal Foundation.

(2)(a) These documents may be inspected or obtained at the Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) The "Uniform Standards of Professional Appraisal Practice", may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave, N.W., Suite 900, Washington DC, 20005.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real estate appraisers in Kentucky. Our estimate of appraisers in the "federally related transaction" category is between 1,500 and 2,000.

(a) Direct and indirect costs or savings to those affected: Since each category of certification requires education and since 10 hours of continuing education is required for all participating appraisers, some costs may be required for those who do not have the required precertification education. Also, some will incur costs for continuing education. Testing costs will also apply.

1. First year: Since all precertification education must be completed prior to being certified or licensed and there is no continuing education requirement the first year so there should not be any costs. $200 testing fee will be charged.

2. Continuing costs or savings: Cost for the 10 hours continuing education.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that this agency is aware of.

(b) Reporting and paperwork requirements: Documentation on education and experience will be required.

(2) Effects on the promulgating administrative body: All education, appraisal reports and experience documents will be reviewed to determine validity and to determine if reports meet standards.

(a) Direct and indirect costs or savings: This agency requires each education provider to register and submit education courses for review and approval. Each provider pays $100 for precertification courses and $50 for continuing education courses.

1. First year: The same costs as set out above.

2. Continuing costs or savings: Only continuing education courses will be required after the individual has been licensed.

3. Additional factors increasing or decreasing costs: None that we are aware of.

(b) Reporting and paperwork requirements: This agency will maintain records of all approved education courses and keep records for all participating appraisers on precertification and continuing

education courses.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

### 201 KAR 30:060. Fees administrative regulation.

RELATES TO: KRS 324A.020, 324A.035, 324A.040, 324A.045, 324A.065

STATUTORY AUTHORITY: KRS 324A.040, 324A.045, 324A.065

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public.

Section 1. Fees required by KRS 324A.065(1) and (2) shall be submitted with the application or request.

Section 2. (1) The renewal date for certificates and licenses shall be July 1 of each calendar year.

(2) The fees required for annual renewal of certificates and licenses shall be submitted by certificants or licensees on or before July 1 of each calendar year.

Section 3. The roster fee shall be paid with the application or renewal fee.

Section 4. Examination fees shall be paid prior to an examination.

Section 5. Fees. (1) Federally-related transactions:

(a) Initial application fee: $200;

(b) Examination fee: $200;

(c) An annual certificate or licensure fee: $200;

(d) Duplicate certificate fee: ten (10) dollars;

(e) Certificate correction fee: ten (10) dollars;

(d) Roster fee not to exceed fifty (50) dollars.

(2) Nonfederally-related transactions:

(a) Initial application fee: $100;

(b) Examination fee: $100;

(c) An annual certificate or licensure renewal fee: $100;

(d) Duplicate certificate fee: five (5) dollars;

(e) Certificate correction fee: five (5) dollars;

(f) Roster fee: twenty-five (25) dollars.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

### REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real estate appraisers in Kentucky. Our estimate of appraisers in the "federally related transaction" category is between 1,500 and 2,000.

(a) Direct and indirect costs or savings to those affected: There will be testing fees, initial application fees, and annual renewal fees for participating appraisers.

1. First year: A test fee of $200, an initial application fee of $200 and a registry fee of $35 will be charged the "federally-related transaction" appraiser. The fee for "nonfederal" appraisers will be $100 licensing fee, a $100 testing fee if required, and a $25 roster fee.

2. Continuing costs or savings: First year costs will continue to apply for new applicants and a $200 renewal fee plus the $35 registry fee and a $10 certificate correction fee will be charged to the "federally-related transaction". The "nonfederal" level will have a renewal fee of $100 and a $5 certificate correction fee and a $25 roster fee.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applications and supporting documents to verify education and experience will be required.

(2) Effects on the promulgating administrative body: All applications and supporting documents will be reviewed and maintained according to KRS Chapter 324A.

(a) Direct and indirect costs or savings: The direct cost to the administrative agency to administer the additional nonfederal appraiser program will be the cost of one clerical position, equipment and supplies.

1. First year: The costs as set out above.

2. Continuing costs or savings: The costs as set out above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This agency will administer and maintain records of the appraiser licensing and certification function.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None were considered since this is a federal mandated program and the "nonfederal" program is modeled after the federal program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

### 201 KAR 30:070. Prehearing procedure.

RELATES TO: KRS 324A.020, 324A.050
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public.

Section 1. Complaints and Answers. (1)(a) A complaint against a licensee or a certificant shall be submitted on "Board of Appraisers Complaint Form".

(b) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(c) A complaint shall be notarized.

(d) Exhibits or other documents shall be attached to the complaint.

(e) A copy of the complaint and attachments shall be served on the licensee or certificant by the board:

1. At the last known address of the licensee or certificant;

2. By certified mail, return receipt requested.

(2)(a) The licensee or certificant shall file with the board an answer to the complaint on "Board of Appraisers Answer Form".

(b) The answer shall be notarized.

(c) The answer shall be filed with the board within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on complainant by the licensee or certificant by certified mail, return receipt requested to the address shown on the complaint.

Section 2. Motions, requests, filings, and other material filed with the board shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 3. Withdrawal of Complaint. A complaint may be withdrawn by a complainant if:

(1) A request to withdraw the complaint is received:

(a) Within twenty (20) days after the filing of the complaint; or

(b) Before an answer has been filed by the applicant or appraiser; and

(2) The board approves.

Section 4. Counsel. If a party has retained counsel:

(1) The attorney shall file an entry of appearance with the board;

(2) Notices, correspondence, and orders relating to the hearing shall be transmitted to the attorney; and

(3) Motions, requests, or filings on behalf of a party or appraiser shall be made by the attorney.

Section 5. Investigations. (1) The board shall conduct an investigation of the facts alleged in a complaint:

(a) Upon receipt of a complaint and answer;

(b) If an answer is not filed with the board, upon expiration of the period specified in Section 1 of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

(a) Was conducted by the board or board personnel;

(b) Was authorized by the board or board personnel; and

(c) Is related to the subject matter of the complaint.

(3) A party shall be permitted to rebut or comment upon the information or investigation specified in subsection (1) of this section.

(4) An investigation, or information resulting from an investigation shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

Section 6. Dismissal of Complaint. The board may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the board upon investigation, fail to establish a violation of KRS Chapter 324A or the provisions of administrative regulations promulgated by the board.

Section 7. Witnesses. A party shall file a list of his witnesses:

(1) With the board;

(2) At least ten (10) days prior to the hearing.

Section 8. Subpoenas. (1) A party shall file a written request to the presiding officer at least twenty (20) days prior to a hearing if he wishes to:

(a) Subpoena a witness; or

(b) Require the production of a document.

(2) The request shall contain the:

(a) Name and address of residence and place of employment, including county, of the witness;

(b) Name of document or item, with a description sufficient to identify the document or item.

Section 9. Continuance. (1) A hearing may be continued by the presiding officer:

(a) To permit the completion of discovery or other pehearing procedures; or

(b) For other good cause.

(2) If it is necessary to continue a hearing, the presiding officer shall:

(a) Reschedule the hearing; and

(b) Notify the parties.

(3)(a) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the presiding officer at least thirty (30) working days before the hearing.

(b) If a hearing relates to a complaint, a copy of the motion for continuance shall be mailed to the complainant.

(4) A motion for continuance may be filed upon the occurrence of an emergency.

(5) The presiding officer shall notify a party of his decision in writing.

Section 10. Prehearing Conference. (1) The presiding officer may schedule a prehearing conference:

(a) On his own motion; or

(b) Upon motion of a party.

(2) The presiding officer shall schedule a prehearing conference if he determines that it will:

(a)1. Establish stipulations;

2. Clarify issues;

3. Identify witnesses;

4. Resolve issues relating to:

a. Evidence;

b. Subpoenas;

c. Discovery; or

d. Protective orders; and

(b) Otherwise promote the orderly and prompt conduct of the hearing; or

(c) Promote settlement of the issues raised by a complaint or board action.

(3) If the prehearing officer schedules a prehearing conference, he shall notify the parties in writing:

(a) Of the date, time and place of the prehearing conference; and

(b) That they are required to attend the prehearing conference.

(4)(a) The presiding officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.

(b) A copy of the prehearing order shall be mailed to the parties.

Section 11. Notice of Hearing. (1) The chairman of the board shall schedule a hearing.

(2) He shall notify the parties in writing of the date, time and place of the hearing.

(3) The notice shall contain:

(a) A copy of the prehearing order, if a prehearing conference had been held; and

(b) A concise statement of the issues.

(4) The notice shall provide that the hearing shall be held forty-five (45) working days from the date of the notice.

Section 12. Discovery. (1) A request to obtain discovery shall be filed with the presiding officer.

(2) The request shall:

(a) Specify the type of discovery requested;

(b) Where applicable, describe in sufficient detail:

1. Names and addresses of persons or items;

2. Documents, other items, or places; and

(c) State the reason discovery is requested.

(3) The presiding officer may deny, limit, or require discovery.

(4) Discovery may be obtained by:

(a) Written or oral depositions;

(b) Interrogatories;

(c) Production or inspection of documents or things;

(d) Permission to photograph, or enter upon land or other property; or

(e) Physical or mental examinations.

Section 13. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.

(2) A settlement agreement:

(a) Shall be subject to approval by the board; and

(b) If approved by the board, shall constitute:

1. A waiver of a party's right to an administrative hearing; and

2. The final order of the board.

(3) The board may order that a proposed settlement agreement be amended.

Section 14. Motions. A motion shall be:

(1) In writing;

(2) Signed; and

(3) Filed with the board and the hearing officer.

Section 15. Material Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) "Board of Appraisers Complaint Form (Jan 93)";

(b) "Board of Appraisers Answer Form (Jan 93)";

(c) "Board of Appraisers Subpoena Form (Jan 93)";

(2) These forms may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Ky, 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 2,000 and 3,000.

(a) Direct and indirect costs or savings to those affected: Small to no cost.

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: This regulation provides a method for effected individuals to respond to complaints in writing and may require them to submit documentation.

(2) Effects on the promulgating administrative body: All complaints, responses and investigative reports will need to be maintained by the agency.

(a) Direct and indirect costs or savings: The only cost to the agency beyond normal operating cost would be the cost of investigations at $25 per hour.

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: All complaints must be forwarded to respondent for written reply. All paperwork must be maintained by the board.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. This method is a tried and proven satisfactory method.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## BOARD OF APPRAISERS

### 201 KAR 30:080. Hearings.

RELATES TO: KRS 324A.020, 324A.035

STATUTORY AUTHORITY: KRS 324A.020

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public.

Section 1. A party may:

(1) Represent himself; or

(2) Be represented by:

(a) An authorized representative; or

(b) Counsel.

Section 2. Presiding Officer. (1) The presiding officer shall be:

(a) The chairman of the board; or

(b) A person designated by the chairman to serve as the presiding officer.

(2) The presiding officer may:

(a) Issue subpoenas;

(b) Take depositions;

(c) Require production of documents;

(d) Administer oaths;

(e) Examine witnesses;

(f) Render decisions on motions, requests, or other matters, that do not result in a final disposition of the complaint;

(g) Receive evidence; and

(h) Take other action required in the conduct of hearings.

Section 3. (1) A presiding officer shall be disqualified:

(a) If it is established that he is biased or prejudiced; or

(b) For conflict of interest; or

(c) For violation of the provisions of statutes or administrative regulations governing board hearings; or

(d) For other cause for which a judge may be disqualified.

(2)(a) A party may file a written motion to disqualify a presiding officer upon the latter of:

1. Receipt of notice of the identity of the presiding officer; or

2. Discovery of facts establishing grounds for disqualification of the presiding officer.

(b) The motion shall state the facts or reasons supporting it.

(c) The board shall state in writing the facts or reasons for its decision on the motion to disqualify.

Section 4. Evidence. (1) Formal rules of evidence shall not apply.

(2) The presiding officer shall exclude evidence that is:

(a) Irrelevant;

(b) Immaterial;

(c) Unduly repetitious; or

(d) Excludable on:

1. Constitutional or statutory grounds; or

2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.

(3) Testimony or other evidence shall be admitted if it is:

(a) Based on facts; and

(b) Commonly relied upon by reasonably prudent persons.

(4)(a) Evidence shall not be excluded solely because it is hearsay.

(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.

(5) The presiding officer may admit party or witness testimony taken by deposition if:

(a) A party or witness is unable to attend through no fault of his own; and

(b) The opposing party has had a full opportunity to cross-examine the party or witness.

(6) Evidence may be received in written form if it will:

(a) Expedite the hearing; and

(b) Not substantially prejudice the interest of a party.

(7)(a) A copy or an excerpt of documentary evidence may be received.

(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.

(8) Official notice shall be taken of:

(a) A fact that would be judicially noticed in the courts of the Commonwealth;

(b) The record of other proceedings before the board;

(c) Technical or scientific matters within the specialized knowledge of the board;

(d) Codes or standards that have been adopted by:

1. An agency of the United States, the Commonwealth, or another state; or

2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.

Section 5. Ex parte Communications. (1) Except as provided in this section, a member of the board, a presiding officer, a party, or a person with a direct or indirect interest in the outcome of a pending hearing, shall not communicate, directly or indirectly, with regard to an issue of a pending hearing with a:

(a) Party;

(b) Person who has a direct or indirect interest in the outcome of the hearing;

(c) Person who presided at a previous stage of the hearing.

(2) Communications prohibited by the provisions of this section may be made if:

(a) Written notice is given to other parties; and

(b) Other parties are permitted to participate in the communication.

(3) A presiding officer may communicate with staff assistants, or other board personnel, if they:

(a) Have not received ex parte communications that are prohibited to the presiding officer; and

(b) Do not furnish, augment, diminish, or modify the evidence in the record.

(4) If, prior to serving as the presiding officer of a hearing, the presiding officer has received an ex parte communication that he is prohibited from receiving as a presiding officer, he shall:

(a) Place on the record of the pending hearing:

1. Written communications received;

2. Written responses to them;

3. A memorandum stating oral communications and responses; and

4. The identity of the person from whom a communication was received; and

(b) Notify and transmit copies of the items specified in paragraph (a)1 of this subsection to the parties to the hearing.

(5) Within ten (10) days of receipt of the presiding officer's notice and transmittal, a party may:

(a) Rebut the prohibited communications specified in this section; or

(b) File a motion with the board to:

1. Disqualify the presiding officer; and

2. Seal the portions of the record pertaining to the prohibited communications.

(6) The board shall:

(a) Report any willful violation of this section to the appropriate authorities for disciplinary proceedings; and

(b) Take disciplinary action authorized by statute or administrative regulation of the board.

Section 6. Separation of Functions. (1) A person shall not serve as a presiding office of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator, prosecutor, or advocate with regard to the subject matter of the hearing.

(2) The provisions of subsection (1) of this section shall apply to a person who is subject to the authority, direction, or discretion of persons specified in subsection (1) of this section.

(3) A person who has participated in a determination of probable cause, or in another equivalent preliminary determination related to complainant or board action that gave rise to a hearing, shall not serve as the presiding officer of the hearing.

Section 7. Procedure at Hearing. (1) A hearing shall proceed as follows:

(a) Opening statements by:

1. Board or its counsel;
2. Complainant; and
3. Respondent.

(b) Complainant's presentation of:
1. Testimony of complainant or witnesses; and
2. Evidence.

(c) Board presentation of:
1. Witnesses; and
2. Evidence.

(d) Respondent's presentation of:
1. Witnesses; and
2. Evidence.

(e) Closing arguments.

(f) The presiding officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 8. Posthearing Procedure. (1) If the hearing has not been conducted by the board the presiding officer shall prepare and submit to the board:

(a) Findings of fact and conclusions of law;

(b) A recommended order; and

(c) Submit a transcript of the hearing to the board.

(2) A copy of the findings of fact, conclusions of law and recommended order, or decision if the board has conducted the hearing, shall be mailed to all parties of record.

(3)(a) A party may file exceptions to the presiding officer's findings of fact, conclusions of law and recommended order within fifteen (15) days of their submission to the board.

(b) If the hearing was conducted by the board, a party shall file exceptions with the board.

(4) The board may:

(a) Adopt the findings of fact, conclusions of law, and recommended order of the hearing officer; or

(b) Prepare its own findings of fact, conclusions of law and order; or

(c) Remand for further action by the hearing officer; or

(d) Take any action it deems necessary to resolve the issues raised by the hearing.

(5) The decision of the board shall:

(a) Be in writing; and

(b) Contain a statement of its:
1. Findings of fact; and
2. Conclusions of law.

\DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 2,000 and 3,000.

(a) Direct and indirect costs or savings to those affected: Effected individuals may need legal counsel.

1. First year: Same as above.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Effected individuals will need to provide any documentation required for the hearing.

(2) Effects on the promulgating administrative body: The board will need to collect all evidence and conduct a hearing in each case.

(a) Direct and indirect costs or savings: No added cost to board's normal operation.

1. First year: NA
2. Continuing costs or savings: NA
3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: The board will need to collect all necessary documents for the board to review as evidence during hearing.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None 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: 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: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

## KENTUCKY REAL ESTATE APPRAISERS BOARD

### 201 KAR 30:090. Repeal administrative regulation.

RELATES TO: KRS Chapter 324A

STATUTORY AUTHORITY: KRS Chapter 324A

NECESSITY AND FUNCTION: This administrative regulation does not conform to the provisions of Title XI of the Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351) or KRS Chapter 324A. 201 KAR 30:100 is no longer required because: (1) Senate Bill 350 extensively amended KRS Chapter 324A governing real property appraiser; (2) new administrative regulations must be promulgated to comply with federal requirements relating to real property appraisers and appraisals; and (3) this administrative regulation does not comply with KRS 13A.221, requiring separate administrative regulations for each topic.

Section 1. 201 KAR 30:100, Appraisers classification, fees, education, continuing education, experience, testing, application, renewal and report requirements and practice standards, is hereby repealed.

DON PARIS, Chairman

APPROVED BY AGENCY: February 10, 1993

FILED WITH LRC: February 10, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 26, 1993, at 10 a.m. at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this committee in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes

to be heard will be given an opportunity to comment on the proposed 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: James P. Daniels, Real Estate Appraisers Board, Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact person: James P. Daniels

(1) Type and number of entities affected: While the exact number of real estate appraisers is not known, we estimate there is between 2,000 and 3,000 in Kentucky.

(a) Direct and indirect costs or savings to those affected: There is no cost to members.

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation does not itself increase or decrease cost.

(b) Reporting and paperwork requirements: NA

(2) Effects on the promulgating administrative body: This regulation has no effect on the administrative agency.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The certification of appraisers is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not appropriate.

**GENERAL GOVERNMENT CABINET**
**Department of Agriculture**
**Division of Pesticides**

**302 KAR 31:030. Fine schedule for violation of KRS 217B.550.**

RELATES TO: KRS 217B.550

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.515, 217B.550, 217B.585, 217B.990

NECESSITY AND FUNCTION: To establish a system of regulatory fines pursuant to the violations set forth in KRS 217B.550.

Section 1. (1) Following a finding of a violation by a Department of Agriculture Division of Pesticides Inspector:

(a) A notice of noncompliance shall be issued to the violator advising of the violation; and

(b) If the violation is not abated within the reasonable time period set forth in the notice of noncompliance, unless good cause is shown to the Division of Pesticides, then an administrative fine shall be levied pursuant to this administrative regulation.

(2) Pursuant to KRS 217B.193, a notice of noncompliance shall be sent to the licenseholder by certified mail, return receipt requested, addressed to the licenseholder's permanent address as shown on department records.

(3) The reasonable time period set forth in the violation commences on the day the certified notice is issued to the licenseholder's permanent address.

(4) A time period of ten (10) days will be considered a reasonable time period for the violator to abate any violation unless the commissioner determines that additional time, but not more than ninety (90) days, will be necessary under the facts and circumstances.

(5) If the violation is found to not be correctable within the reasonable time period, then the Division of Pesticides has the ability to immediately implement the administrative fines made pursuant to this administrative regulation.

Section 2. The administrative fines made pursuant to KRS 217B.193 for a violation of KRS 217B.550 shall be as follows:

(1) Making any material representation for the purpose of defrauding the public, or using any method or material that is not reasonably suited for the purpose for which it was employed, by any licensed applicator, manager or his solicitor or agent - $200.

(2) Failure of a licensed operator or manager to comply with any of the provisions of this chapter or any reasonable rule or regulation promulgated by the department - $200.

(3) Failure to pay any final judgment rendered against any licensed operator or manager, his employee, solicitor or representative by reason of liabilities resulting from activities under KRS 217B.515 to 217B.585 - $300.

(4) Failure to make the registration and pay the annual licensing fees as required by KRS 217B.535 - $100.

(5) Failure to attend training courses approved by the department on recommendation of the Pest Control Advisory Board as specified by the Kentucky state plan - $100.

(6) The making of false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized - $200.

(7) The making of a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.542 to 217.640 - $100.

(8) The application of known improper materials - $200.

(9) Knowingly operating faulty or unsafe equipment - $100.

(10) Knowingly operating in a faulty, careless or negligent manner - $100.

(11) Failure to keep and maintain the records required by KRS 217B.510, or to make reports when and as required - $100.

(12) The making of false or fraudulent records, invoices or reports - $200.

(13) Engaging in the business of the application of a pesticide without having a licensed applicator or operator in direct supervision - $100.

(14) Using fraud or misrepresentation in making an application for a license or renewal of a license - $200.

(15) Aiding or abetting a licensed or an unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, combining or conspiring with such a licensed person to evade the provisions of KRS 217B.515 to 217B.585, or allowing one's license to be used by an unlicensed person - $200.

(16) The making of false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land - $200.

(17) Impersonating any state, county or city inspector or official - $200.

(18) Any act contrary to the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and its regulation so long as not found in the violations listed in this section - $200.

Section 3. (1) A second violation, of the same violation for which a fine has been levied within a sixty (60) day period of the first violation shall result in an assessment of a doubled fine.

(2) A third violation of the same violation for which two (2) previous fines have been levied, within a ninety (90) day period of the first violation shall result in an assessment of a tripled fine.

(3) A fourth violation of the same violation for which three (3) fines have been levied within a 120 day period for the first violation may result in the suspension, revocation, or modification of a license application pursuant to KRS 217B.545.

(5) The Division of Pesticides maintains the ability to immediately suspend, revoke, or modify the provisions of any applicator's or manager's license subject to KRS 217B.545.

Section 4. For purposes of Section 3 of this administrative regulation, an initial violation or subsequent violation shall only be utilized to initiate the enhanced fines and penalties set forth in Section 3 of this administrative regulation if the violator fails to take the appropriate corrective action within the required time period.

Section 5. Failure to pay any fine within thirty (30) days of the end of the reasonable time period prescribed in Section 1 of this administrative regulation shall result in a suspension revocation or modification of a license/certification pursuant to KRS 217B.545.

Section 6. Each office or branch office shall be treated as separate entities for the purposes of enforcing the fine and penalty enhancing provisions contained in Section 3 of this administrative regulation such that the fines or penalties shall not be enhanced unless the subsequent violations mentioned in Section 3 of this administrative regulation are committed in the same branch or office in which the first violation occurs.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: February 11, 1993

FILED WITH LRC: February 11, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 17, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you 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: Donna Greenwell Dutton, Assistant General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Egnew

(1) Type and number of entities affected: 2,134 companies.

(a) Direct and indirect costs or savings to those affected: If violation exists, then fines may be assessed against companies.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: If violation exists, then some reporting and paperwork required.

(2) Effects on the promulgating administrative body: If violation exists, then cost may be incurred in enforcing regulation.

(a) Direct and indirect costs or savings: If violation exists, then cost may be incurred in enforcing regulation.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: If violation exists, then some reporting and paperwork required.

(3) Assessment of anticipated effect on state and local revenues: If violation exists, then fines may be assessed.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. In this administrative regulation there are different fine amounts for different violations but all companies are treated the same.

**GENERAL GOVERNMENT CABINET**
**Department of Agriculture**
**Division of Pesticides**

**302 KAR 31:035. Fine schedule for violation of KRS 217B.120.**

RELATES TO: KRS 217B.120

STATUTORY AUTHORITY: KRS 217B.050, 217B.120, 217B.193, 217B.585, 217B.990

NECESSITY AND FUNCTION: To establish a system of regulatory fines pursuant to the violations set forth in KRS 217B.120.

Section 1. (1) Following a finding of a violation by a Department of Agriculture Division of Pesticides Inspector:

(a) A notice of noncompliance shall be issued to the violator advising of the violation; and

(b) That if the violation is not abated within the reasonable time period set forth in the notice of noncompliance, unless good cause is shown to the Division of Pesticides, then an administrative fine shall be levied pursuant to this regulation.

(2) Pursuant to KRS 217B.193, a notice of noncompliance shall be sent to the licenseholder by certified mail, return receipt requested, addressed to the licenseholder's permanent address as shown on department records.

(3) The reasonable time period set forth in the violation commences on the day the certified notice is issued to the licenseholder's permanent address.

(4) A time period of ten (10) days will be considered a reasonable time period for the violator to abate any violation unless the commissioner determines that additional time, but not more than ninety (90) days, will be necessary under the facts and circumstances.

(5) If the violation is found to not be correctable within the reasonable time period, then the Division of Pesticides has the ability to immediately implement the administrative fines made pursuant to this regulation.

Section 2. The administrative fines for a violation of KRS 217B.120 shall be as follows:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of material or methods to be utilized - $200.

(2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640 - $100.

(3) Applied known ineffective or improper materials - $200.

(4) Operated faulty or unsafe equipment - $100.

(5) Operated in a faulty, careless or negligent manner - $100.

(6) Refused or, after notice, neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the department - $100.

(7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required - $100.

(8) Made false or fraudulent records, invoices or reports - $200.

(9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision - $100.

(10) Operated unlicensed equipment - $50.

(11) Used fraud or misrepresentation in making an application for a license or renewal of a license - $200.

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit - $100.

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person - $200.

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land - $200.

(15) Impersonated any state, county or city inspector or official - $200.

(16) Any act contrary to the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and its regulations so long as not found in the violations listed in this section - $200.

Section 3. (1) A second violation, of the same violation for which a fine has been levied within a sixty (60) day period of the first violation shall result in an assessment of a doubled fine.

(2) A third violation of the same violation for which two (2) previous fines have been levied, within a ninety (90) day period of the first violation shall result in an assessment of a tripled fine.

(3) A fourth violation of the same violation for which three (3) fines have been levied within a 120 day period for the first violation may result in the suspension, revocation, or modification of a license application pursuant to KRS 217B.545.

(5) The Division of Pesticides maintains the ability to immediately suspend, revoke, or modify the provisions of any applicator's or manager's license subject to KRS 217B.545.

Section 4. For purposes of Section 3 of this administrative regulation, an initial violation or subsequent violation shall only be utilized to initiate the enhanced fines and penalties set forth in Section 3 of this administrative regulation if the violator fails to take the appropriate corrective action within the required time period.

Section 5. Failure to pay any fine within thirty (30) days of the end of the reasonable time period prescribed in Section 1 of this administrative regulation shall result in a suspension revocation or modification of a license/certification pursuant to KRS 217.545.

Section 6. Each office or branch office shall be treated as separate entities for the purposes of enforcing the fine and penalty enhancing provisions contained in Section 3 of this administrative regulation such that the fines or penalties shall not be enhanced unless the subsequent violations mentioned in Section 3 of this administrative regulation are committed in the same branch or office in which the first violation occurs.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: February 11, 1993

FILED WITH LRC: February 11, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, March 22, 1993 at 9 a.m. at Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 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 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: Donna Greenwell Dutton, Assistant General counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Egnew

(1) Type and number of entities affected: 2,134 companies.

(a) Direct and indirect costs or savings to those affected: If violation exists, then fines may be assessed against companies.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: If violation exists, then some reporting and paperwork required.

(2) Effects on the promulgating administrative body: If violation exists, then cost may be incurred in enforcing regulation.

(a) Direct and indirect costs or savings: If violation exists, then cost may be incurred in enforcing regulation.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: If violation exists, then some reporting and paperwork required.

(3) Assessment of anticipated effect on state and local revenues: If violation exists, then fines may be assessed.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. In this administrative regulation there are different fine amounts for different violations but all companies are treated the same.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:005. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for

employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the administrative regulations concerning the selection process.

Section 1. Definitions. (1) "Cadet trooper" shall mean an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and conditionally employed as a trainee.

(2) "Register" shall mean the list of persons eligible for selection as a cadet trooper.

(3) "Appointment" shall mean selection by the commissioner of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(4) "Candidate" shall mean an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(5) "Applicant" shall mean a person who submits an employment application for the position of cadet trooper and who participates in the selection process.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:015. Qualifications.

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040, 16.080

NECESSITY AND FUNCTION: KRS 16.040 sets forth the basic qualifications for appointment as an officer. KRS 16.080 vests in the commissioner the authority to adopt administrative regulations for enlistment. This administrative regulation establishes the procedure to be used to determine whether applicants possess the basic qualifications.

Section 1. Applicants shall submit a birth certificate to establish that they meet the age qualification of KRS 16.040(2)(a).

Section 2. Applicants shall submit to a background investigation to establish the good moral character qualification of KRS 16.040(2)(b).

Section 3. Applicants who are offered conditional employment as cadet troopers shall submit to a medical examination to establish the good health qualification of KRS 16.040(2)(b).

Section 4. Applicants who are citizens of another country at the time of application shall submit naturalization certificates prior to employment to establish the citizenship qualification of KRS 16.040(2)(c).

Section 5. Applicants who are citizens of another state at the time of application shall submit Kentucky motor vehicle operator's licenses prior to employment to establish the residency qualification of KRS 16.040(2)(c).

Section 6. Applicants shall submit high school diplomas or GED equivalency certificates to establish the education qualification of KRS 16.040(2)(d). Five (5) years of full-time employment as a law enforcement officer or police administrator shall suffice to meet the education qualification.

Section 7. All persons appointed as officers shall be physically able to safely perform essential job tasks, with or without reasonable accommodation, including but not limited to reading, writing, operating a police pursuit vehicle at high speed under all weather and lighting conditions, running, climbing stairs and fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing a handgun with either hand and reloading, and firing and reloading a shotgun. To determine these physical qualifications, a medical examination shall be conducted of applicants who are offered employment as cadet troopers. The medical examination may include physical tests to determine ability to perform the essential job tasks. Applicants hired as cadet troopers shall be required to perform simulated essential job tasks during basic training at the Kentucky State Police Academy. Inability to safely perform essential job tasks, with or without reasonable accommodation, shall be grounds for disqualification or dismissal.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress
(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.
(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: Does not apply.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.
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 requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.
(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act
2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.
3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.
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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:025. Disqualification.

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the grounds for disqualification.

Section 1. Applicants will be disqualified from further participation in the selection process or removed from the register if it is determined that:

(1) An applicant does not meet any one (1) of the qualifications for appointment as an officer;

(2) An applicant has made a false statement of material fact on the application, or in response to any questions or requests for information during the selection process;

(3) An applicant has used or attempted to use political influence, coercion or bribery to secure an advantage in any phase of the selection process;

(4) An applicant has cheated during the course of any examination required during the selection process, or has attempted to gain an advantage over other applicants by any dishonest or intentionally misleading act or omission;

(5) An applicant has failed to comply with any instructions from the department relating to the selection process;

(6) An applicant has ben dismissed for cause from any public agency, or has resigned while charges of misconduct were pending;

(7) An applicant has been convicted of a felony or any crime of moral turpitude;

(8) An applicant is a current user of a controlled substance, unless prescribed by a physician;

(9) An applicant is addicted to any controlled substance or intoxicant;

(10) An applicant has more than five (5) driver demerit points against his operator's license;

(11) An applicant tests positive for an unlawful controlled substance after a blood or urine analysis.

Section 2. If probable cause exists to believe that an applicant has committed an act or omission which if true would result in disqualification, the department may defer any further processing of the application, or may condition further processing upon successful completion of a polygraph examination conducted by a licensed examiner employed by the department.

Section 3. An applicant who is disqualified or upon whose application further processing is deferred shall be informed within ten (10) working days of the reason for the disqualification or deferral, and of the right to appeal to the State Police Personnel Board.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

**502 KAR 45:035. Application.**

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department. This administrative regulation requires applicants to complete

a written application form.

Section 1. Applications shall be made on forms prescribed by the commissioner and provided by the department. The application form was adopted December 1, 1992, and is hereby incorporated by reference. Application forms may be inspected and copied by contacting the Kentucky State Police Personnel Section, 919 Versailles Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. Failure to submit the application in a timely manner or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress
(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.
(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: Does not apply.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.
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 requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.
(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act
2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.
3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.
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. Not applicable.

## DEPARTMENT OF STATE POLICE

**502 KAR 45:045. Written examination.**

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes a written examination.

Section 1. The written examination shall be practical in nature and shall be designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. Examinations shall be administered at such times and places as designated by the commissioner. The commissioner may direct that examinations be conducted regionally if he finds regional examinations to be convenient and practicable.

Section 3. An applicant may take the examination only one (1) time in any twelve (12) month period.

Section 4. Applicants who submit an incomplete or inaccurate application shall not be allowed to take the examination.

Section 5. Applicants who have failed to meet the age or educational requirements shall not be permitted to take the written examination.

Section 6. Examinations shall be rated impartially, and each applicant shall be advised of his score. The written examination score shall be combined with the oral interview score to determine placement on the register, with the written examination score constituting forty (40) percent of the final score and the oral interview score constituting sixty (60) percent.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

**502 KAR 45:055. Oral interview.**

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) Applicants who have completed the written examination shall be eligible to participate in the oral interview component of the selection process. Oral interviews shall be conducted by oral interview panels appointed by the commissioner, who shall determine the number of applicants to be interviewed. The commissioner shall determine the number of applicants to be interviewed based upon the number of available vacant funded positions and projections based upon past selection processes of the number of applicants necessary to process in order to fill the available positions. Applicants shall be selected for interviews in rank order as determined by their scores on the written examination. The commissioner may deviate from the rank order of score only when necessary to correct a manifest imbalance in the representation of minorities or women in the pool of qualified applicants.

(2) Each oral interview panel shall consist of three (3) members, at least one (1) of which shall be a female or a member of a minority group, and at least one (1) of which shall be a sworn officer. To ensure fairness and consistency, panel members shall receive training related to interview methodology and equal employment opportunity law.

(3) Members of the oral interview panels shall disclose each instance in which they are personally acquainted with an applicant to be interviewed or with any member of the applicant's immediate family, and that applicant shall be interviewed by another panel.

Section 2. (1) Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of six (6) categories by each panel member. The categories shall be:

(a) Maturity, emotional stability and ego strength;

(b) Conscientiousness and persistence;

(c) Social boldness and venturesomeness;

(d) Self-assuredness;

(e) Self-sufficiency; and

(f) Self-discipline.

For each category, the applicant shall be scored on a range from zero to five (5).

(3) The oral interview score shall constitute sixty (60) percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of his score and ranking, and shall be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process by consenting to a background investigation.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
FILED WITH LRC: February 9, 1993 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress
(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.
(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: Does not apply.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.
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 requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.
(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act
2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.
3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.
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. Not applicable.

## DEPARTMENT OF STATE POLICE

**502 KAR 45:065. Background investigation.**

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 direct the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment. This administrative regulation establishes a background investigation as a component of the selection process.

Section 1. Applicants who have completed the written examination and the oral interview and who have requested to remain in the selection process shall be required to submit to a background investigation.

Section 2. Background investigations shall be conducted by individuals selected by the commissioner. Applicants who have lived in another state shall be investigated by an appropriate law enforcement agency in that state, at the request of the commissioner. Applicants shall not be considered for employment until the background investigation is completed. Reports of all background investigations shall remain confidential and shall be filed in headquarters.

Section 3. Background investigators may discontinue an investigation and recommend disqualification or deferral when the investigation reveals facts or circumstances which constitute grounds for disqualification or deferral.

Section 4. Background investigators may express opinions about the suitability of applicants for employment, but their opinions shall be expressed in writing and supported by specific factual reasons. The commissioner may give such weight to an opinion by an investigator as he deems appropriate.

Section 5. All reports of background investigations shall be confidential. Information obtained as a result of a background investigation shall not be disseminated. Reports of background investigations shall be filed at Kentucky State Police Headquarters in a secure file to which only the commissioner or persons specifically designated by the commissioner shall have access.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

**502 KAR 45:075. Register.**

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which lists vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. The commissioner shall establish and maintain a register of the names of applicants eligible for selection to the position of cadet trooper. The commissioner shall determine, based upon the needs of the department, projected attrition, authorized strength levels and number of applicants, the date of establishment of the register and the number of eligible applicants to be placed on the register.

Section 2. Applicants who have completed the written examination, the oral interview, the background investigation, and who have not been disqualified shall be placed on the register in rank order, as determined by the combined score of the written examination and the oral interview. Applicants who receive the same score shall be ranked by random draw.

Section 3. The commissioner shall select candidates for employment as cadet troopers in the order of placement on the register, but may deviate from that order when necessary to correct a manifest underrepresentation of minorities or women in any cadet class, or when the background investigation reveals that a candidate is less suitable for employment than the candidate who occupies the next position on the register.

Section 4. The register shall be continuous, and when an applicant's name is placed on the register as a candidate for selection the applicant may not again participate in the selection process for a period of twelve (12) months. Any candidate who is not selected for employment within a period of twenty-four (24) months from the date of placement on the register shall have his name removed from the register.

Section 5. The commissioner may remove a candidate from the register for the following reasons:

(1) Upon receipt of reliable information indicating grounds for disqualification or deferral;

(2) When the candidate cannot be located by postal authorities;

(3) When the candidate declines an offer of employment, fails to respond to an offer of employment, or indicates that he or she no longer wishes to be considered for employment;

(4) Upon the expiration of a period of twenty-four (24) months from the date of placement on the register.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
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REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:085. Medical examination.

RELATES TO: KRS 16.040
STATUTORY AUTHORITY: KRS 16.040, 16.080
NECESSITY AND FUNCTION: KRS 16.040 provides that officers must be in good health and directs the commissioner to prescribe minimum physical requirements for appointment and to conduct tests and require physical examinations to determine the fitness of each applicant. This administrative regulation establishes the tests and examinations which are to be conducted.

Section 1. Applicants selected to be cadet troopers and offered probationary employment as trainees shall be required to submit to medical examinations to determine fitness to safely perform essential job tasks with or without reasonable accommodation. The medical examination shall be conducted after an offer of employment is made but before applicants report for training. The offer of employment shall be conditioned upon successful completion of the medical examination.

Section 2. Medical examinations shall be conducted by physicians selected by the department. The physicians shall render opinions to the department as to whether applicants who have been offered employment are physically fit to safely perform essential job tasks, with or without reasonable accommodation, and as to whether applicants have any medical condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. As part of the medical examination, applicants shall be required to provide complete medical history information and to answer questions related to the examination. Information and records related to the medical examinations shall be confidential.

Section 4. The medical examination may include tests conducted by an occupational therapist under the direction of the examining physician, if necessary to determine an applicant's ability to safely perform essential job tasks with or without reasonable accommodation.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993

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REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:095. Psychological assessment.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.040 and 16.050 require the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment as officers. This administrative regulation establishes a psychological assessment.

Section 1. An applicant selected to be a cadet trooper and offered probationary employment as a trainee shall be required to submit to a psychological assessment, which shall be conducted after an offer of employment is made but prior to completion of training. Continued employment shall be conditioned upon successful completion of the psychological assessment.

Section 2. The psychological assessment shall be conducted by a psychologist selected by the department. The psychologist shall render an opinion to the department as to whether an applicant who has been offered employment is psychologically fit to safely perform the essential job tasks of an offer with or without reasonable accommodation, and as to whether an applicant has any psychological condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. Records related to the psychological assessment shall be confidential.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

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Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:105. Appointment.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.050 authorizes the Commissioner of the Department of State Police to appoint persons as officers as necessary for the efficient administration of the department. KRS 16.050 directs appointments to vacancies to be made from lists of eligibles. This administrative regulation establishes the method of appointment.

Section 1. The commissioner in his discretion shall determine, based on the needs of the department, projected attrition, and authorized strength levels, the number of candidates to be offered employment as cadet troopers. This offer of employment shall be subject to the condition that the candidate submits to a medical and psychological examination and is found fit to perform safely the essential job tasks of an officer, with or without reasonable accommodation.

Section 2. Candidates who are offered employment as cadet troopers shall be required to undergo training at the Kentucky State Police Academy prior to appointment as officers. During the training period, a cadet trooper may be dismissed at any time, with or without cause.

Section 3. Cadet troopers who successfully complete academy training shall be appointed as officers and given the constitutional oath of office. Officers shall be on probation for a period of one (1) year from and after the date of appointment, and may be dismissed from employment at any time during the probationary period, with or without cause, pursuant to KRS 16.140(11).

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:115. Appeals.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY AND FUNCTION: KRS 16.050 directs that the State Police Personnel Board shall hear appeals from applicants. This administrative regulation establishes the procedure for appeals.

Section 1. Applicants who are disqualified or deferred and who believe that the disqualification or deferral was unlawful or that they have been discriminated against because of their race, religion, sex, age, disability, ethnic origin or political affiliation may initiate an appeal to the board by filing a statement of appeal in the office of the commissioner.

Section 2. The statement of appeal shall be in writing and shall be dated, signed, and sworn. It shall set forth with particularity the specific acts or omissions that are alleged to be discriminatory or otherwise unlawful. The statement of appeal shall be filed within thirty (30) days of the date of the act or omission which forms the basis for the appeal, or, if more than thirty (30) days have elapsed, within ten (10) days of the date that the applicant received notice or first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement of appeal by the commissioner, legal counsel for the department shall file a response which shall be served upon the applicant appellant. No later than sixty (60) days thereafter, the board shall consider the statement of appeal and the response. The board may rule upon the appeal based upon the statement of appeal and response, or in its discretion may order a hearing, with at least ten (10) days prior notice to the applicant appellant.

Section 4. The board in its discretion may employ hearing officers who are attorneys to conduct the hearings and make advisory findings of fact, conclusions of law and recommendations. At the hearing, the board shall not be bound by rules of order, evidence, or procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6) months of the date of filing of the statement of appeal, and shall enter an order which sets forth the appropriate relief, except that no party to the appeal may recover attorney's fees.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

## DEPARTMENT OF STATE POLICE

### 502 KAR 45:116. Repeal of 502 KAR Chapter 45.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation repeals the former administrative regulations relating to selection of officers.

Section 1. The following administrative regulations are repealed: 502 KAR 45:010, 502 KAR 45:020, 502 KAR 45:030, 502 KAR 45:040, 502 KAR 45:050, 502 KAR 45:060, 502 KAR 45:070, 502 KAR 45:080, 502 KAR 45:090, 502 KAR 45:100, 502 KAR 45:110, 502 KAR 45:120, 502 KAR 45:125, and 502 KAR 45:130.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman

APPROVED BY AGENCY: February 8, 1993

FILED WITH LRC: February 9, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 26, 1993, at 10 a.m. in Room 113, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Persons interested in attending this meeting must notify this agency in writing by March 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry E. Fentress, Legal Counsel, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6318.

REGULATORY IMPACT ANALYSIS

Contact person: Larry Fentress

(1) Type and number of entities affected: This regulation affects persons who apply for employment as cadet troopers with the Department of State Police. The number of persons who will apply is unknown.

(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: Does not apply.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.

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 requirements will be created by this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are feasible due to the requirements of the Civil Rights Act of 1991 and the Americans with Disabilities Act.

(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? Tiering is not applied in this regulation. The only regulated entities are persons who apply for

employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Americans with Disabilities Act

2. State compliance standards. There are no specific state compliance standards. State government employers must comply with the provisions of the Americans with Disabilities Act.

3. Minimum or uniform standards contained in the federal mandate. The Americans with Disabilities Act forbids preemployment medical tests or questions regarding physical abilities unless specifically and directly related to an applicant's ability to perform essential job tasks, with or without reasonable accommodation.

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. Not applicable.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of the State Fire Marshal**

**815 KAR 45:080. Volunteer fire department aid.**

RELATES TO: KRS Chapter 95A, 136.392
STATUTORY AUTHORITY: KRS 95A.262(2)
NECESSITY AND FUNCTION: The Commission on Fire Protection Personnel Standards and Education is required by KRS 95A.262 to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation sets out standards and procedures for determining the use of volunteer fire department aid. This administrative regulation contains the substance of 815 KAR 46:010 which has been repealed.

Section 1. Definitions. (1) "Certified firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually.

(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.

(3) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment.

(5) "Full-time paid firefighter" means an individual who works for a minimum salary of $8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the Department of Housing, Buildings and Construction or the Commission on Fire Protection Personnel Standards and Education.

(6) "Volunteer fire department" means a fire department recognized by the Department of Housing, Buildings and Construction upon recommendation of the commission, which has a membership consisting of less than fifty (50) percent of its members being full time paid firefighters.

(7) "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) To qualify to receive aid under the volunteer fire department aid law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2).

(2) Any fire department or entity eligible for and receiving, pursuant to this administrative regulation, shall have a minimum of fifty (50) percent of its personnel certified as recognized by the commission.

(3) Certification of personnel shall be determined from the firefighter application form outlined in Section 6 of this administrative regulation which are submitted to the commission regarding active or inactive status of existing members as well as departure of members and entry of new members.

(4) New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state-aid funding.

(5) To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the chief officer or his appointed representative of each department to furnish any information required by the commission for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS Chapter 95A shall file an application form as outlined in Section 6 of this administrative regulation and which may be obtained from the office of the commission.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached a detailed statement of the equipment to be purchased, repairs to be made, or other purposes for which the allotment is to be expended and other information as the commission may require to give proper consideration to the request.

(2) If a new fire department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The fire department aid coordinator shall upon receipt of the application advise the commission as to the validity of the qualifications and approval for grant-in-aid.

(4) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.

Section 5. Processing Applications for and Expenditure of Aid. (1) Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(2) If approved allotment is insufficient to cover the cost of equipment or other approved purposes, funds granted for any fiscal

year may be deposited in any bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed. This shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(3) If an allotment is granted to a fire department and is not to be used for purchase of equipment for which it was granted, the chief of the fire department shall:

(a) Contact the commission directly giving the reason why he wishes to make a change in the original equipment list; and

(b) Resubmit a new equipment list which shall be approved; or

(c) Refund the grant-in-aid allotment.

(4) Amounts expended for expense of firefighters in attending fire related school or classes shall not exceed ten (10) percent for any one (1) fire department. This shall be an item entered on the regular equipment list.

(5) If expenditure is made of any allotted funds, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished the commission. Any false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. Participation Forms. (1) Firefighter application form for certification of personnel.

COMMONWEALTH OF KENTUCKY
COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION
FIRE FIGHTER APPLICATION

___Add new firefighter

___Change data on firefighter

___Delete firefighter record

(NOTE: Certified copy of Death Certificate must be attached on delete)

EDUCATION
(check highest level)
___1. Less than 8th grade
___2. 8th grade
___3. Some high school
___4. High school graduate
___5. GED
___6. Some college
___7. Associates degree
___8. Associates degree plus
___9. Bachelors degree
___10. Bachelors degree plus
___11. Masters degree
___12. Masters degree plus

Name (last, first, middle initial):
Social Security #:
Birthdate (month, date, year):
Race: (1) White___ (2) Black___ (3) Other___
Sex: Male___ Female___
Original employment date (month, day, year):
Years of Experience:
County #:
County Name:
Fire Department #:
Employment date in this dept. (month, day, year):
Status (Active/Inactive):
Status Date (month, day, year):
Classification (check one)
Paid: (1)_____
Volunteer: (2)_____
I.F.B. (3)_____
Other (specify) (4)_____

Department Title:

CENTRAL OFFICE USE ONLY:
Certification Code:
Certification Date (month, day, year):

AUTHORIZING SIGNATURE:
Date (month, day, year):

X X X X X X X X X X X X

(2) Application for qualification of volunteer fire department seeking aid.

Date _____

APPLICATION FOR QUALIFICATION

Name of Fire Department:
City:
County:
Legislative District #:
City Classification:
Municipal Rating:
Insurance Rating:

Is department owned and governed by the city ( ) county ( ) or privately ( )

If department is city owned and governed, give the amount of money appropriated by city to fire department for compensation of firefighter:
for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by city for any or all needs:
are appropriations granted annually or as needed?

If department is county owned and governed, give the amount of money appropriated by county to fire department for compensation of firefighter:
for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by county for all or any needs:

If department is privately owned, do you solicit fees from property owners on an annual basis for department? yes ( ) no ( ). If so, how much yearly average:
are these fees allotted for compensation of firefighter:
or purchase of new equipment and buildings:
or for maintenance of present equipment and buildings:

Describe any other source of income received by the fire department:

Name of chief:
Address:
Name of assistant chief:
Address:

Number of firefighters on the department subject to call at all times:

Number of full-time paid firefighters:

Number of volunteer firefighters who receive some compensation:

Number of qualified (some training) extra firefighters who can be called to assist either a paid or volunteer department in emergency:

When and how much are the volunteers paid:

Is the chief paid? If so, how much:

Is the assistant chief paid? If not, does he receive compensation as a volunteer assistant chief: If so, how much:

Are all volunteer firefighters appointed by the chief or governing body:

Name of all full-time or regular volunteer firefighters who are carried on personnel roster:

Number of hours of drilling conducted each month:
Who conducts the drills:

How many firefighters attend Kentucky Fire School each year:

Do you have training classes each year conducted by Vocational Education:

How many attend?
Does the chief or any member of the fire department attend any district meetings?
Name of district meeting:

EQUIPMENT UNDER JURISDICTION OF FIRE DEPARTMENT

Type of Apparatus:
Number and type:
Number and type:
Number and type:
Number and type:
H.P. of motor:
Type of Pump (centrifugal, rotary, piston):
Capacity of Pump:
Pump single or double stage:
Front or midship mounted:
Size of booster tank (gallons):
Number of booster hose reels:

Describe briefly the year and model of each apparatus and give general condition:

Amount of 2 1/2 inch hose (in feet) carried on apparatus:
Amount of 1 1/2 inch hose (in feet) carried on apparatus:
Amount of 3/4 or 1 inch rubber covered hose (in feet) carried on booster reels:

Ladders carried on this apparatus (number, length, type):
Fire extinguishers carried on this apparatus (number, type, size):
Air packs carried on this apparatus (number, size):
Pike poles:
Plaster hooks (number, length):
Hand lights (number, volts):
Crow or claw bars (number):
Hydrant wrenches (number, type):
Spanners (numbers):
Suction hose (feet):
Rope (feet, size):
Hose adaptors (number, type/size):
Foam solution (kind/amount):
Foam nozzles (type):

How often are trucks inspected and motor stated to test motor, battery and tires:

GENERAL INFORMATION

Firefighter coats (number):
Firefighter pants (number):
Firefighter helmets (number):
Firefighter gloves (number):
Fire blankets (number, size):
Firefighter boots (number):
Salvage covers (number, size):
Portable electric generator (number, capacity):
Flood and/or spot lights (number):
Smoke ejector (number, size):
Extra hose kept at fire station (feet, size):
Portable pumps in department (number, size):
On what apparatus is it carried:
Type of alarm system (kind, size):
Where is alarm system located:

Brief description of fire station, type of construction, location, owner, how heated:

How often is hose removed from apparatus to test, drain, clean and reloaded?

What facilities do you have for cleaning and drying dirty or wet hose?

Miscellaneous remarks concerning department:

1. Is your department organized under Chapter 75 as a fire prevention district?
2. Is your department organized under Chapter 67.320 as a county fire department?
3. Is your department incorporated by the Secretary of State? If so, please attach a copy of papers.
4. If none of the above, how is it organized?

Be absolutely sure that either of these four questions be answered correctly, if either question pertains to your department.

Fire Chief:
Approved by Mayor or County Judge Executive:
Chairman:

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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

Contact person: Wayne Jordan

(1) Type and number of entities affected: All volunteer fire departments recognized by the commission as a result of being Chapter 75, 67 or districts or incorporated if they meet minimum requirements.

(a) Direct and indirect costs or savings to those affected: Eligible to receive a portion of the funds divided by the number of fire departments to buy equipment, etc.

1. First year: Depends on fund and number of qualifying departments.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Only required to submit fire incident reports in timely fashion.

(2) Effects on the promulgating administrative body: Continuation of program with commission making final decision instead of State Fire Marshal.

(a) Direct and indirect costs or savings: No change in the costs of administering the existing program; train personnel same method.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork or reporting.

(3) Assessment of anticipated effect on state and local revenues: Increased local revenues but only for benefit of firefighters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a continuation of method used for 12 years. Proven workable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 815 KAR 46:010 is duplicated and is therefore being repealed by 815 KAR 46:011.

(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: Is tiering applied? Yes. All firefighters, paid or volunteer, receive fire department aid for equipment in equal amounts. Tiering to the extent that the grants only apply to recognized fire departments and paid departments with sufficient training.

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. Volunteer fire departments.

(3) State the aspect or service of local government to which this administrative regulation relates. Fire service.

(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: Qualifying fire departments will be eligible to raise money for facilities and equipment for having trained personnel under this administrative regulation.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of the State Fire Marshal**

**815 KAR 45:090. Certification and qualifications of fire protection instructors.**

RELATES TO: KRS 95A.040(2)(b)

STATUTORY AUTHORITY: KRS 95A.050(3)

NECESSITY AND FUNCTION: KRS 95.040(b) authorizes the Commission on Fire Protection Personnel Standards and Education to certify fire protection instructors. This administrative regulation sets forth the prerequisite for and justification of those instructors. This administrative regulation contains the substance of 815 KAR 45:030, which is being repealed.

Section 1. Definitions. (1) "Certified firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually.

(2) "Commission" means the Commission on Fire Protection Personnel Standards and Education.

(3) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(6) "Educational methodology course" means a course meeting the objectives of NFiPA 1041 and conducted by:

(a) Kentucky Tech; or

(b) A Kentucky college or university; or

(c) The National Fire Academy; or

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the Fire Commission; or

(e) An agency approved by the Fire Commission to train within its jurisdiction.

(6) "Fire department" means:

(a) A fire department organized under KRS Chapter 75;

(b) A fire protection district;

(c) A volunteer fire department; or

(d) A municipal, county or urban-government fire department.

(7) "Fire protection personnel" means an employee or members of a fire department as defined herein:

(a) Whether paid or unpaid; and

(b) Who is engaged in:

1. Fire prevention;

2. Inspecting buildings for compliance with building, fire, energy and life-safety codes and the Architectural Barriers Act;

3. Fire suppression;

4. Fire and arson investigation;

5. Fire-related emergency medical and rescue work; or

6. Other allied fields.

(8) "Fire protection instructor" or "fire service training officer" means a person certified, pursuant to KRS 95A.040(2)(b), and this administrative regulation as qualified to instruct fire protection personnel.

Section 2. Level I Fire Protection Instructors. Persons certified as Level I fire protection instructors shall be authorized to deliver training to the fire department of which they are a member.

(1) Requirements for certification. An individual may be certified by the commission as a Level I instructor if satisfactory written evidence is submitted to the commission that the individual meets the following criteria:

(a) Has submitted a completed application that has been approved by his fire chief;

(b) Is a high school graduate or the equivalent;

(c) Has two (2) years experience as a firefighter;

(d) Is a Kentucky certified firefighter; and

(e) Submits proof that he has completed a sixteen (16) hour National Fire Academy Instructional Techniques class or a class that has been approved by the commission.

(2) Certification terms. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) Certification shall be renewed if an applicant has:

1. Taught at least thirty-two (32) hours, prior to the expiration of his certification; or

2. Attended a sixteen (16) hour National Fire Academy Instructor class, or an equivalent approved by the commission.

(b) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on renewal forms as outlined in Section 8 of this administrative regulation.

Section 3. Level II Fire Protection Instructors. Persons certified as Level II instructors shall be authorized to deliver training to any fire department within the Commonwealth upon invitation by that agency.

(1) Requirements for certification. An individual may be certified by the commission as a Level II fire protection instructor if satisfactory written evidence is submitted to the commission that the individual:

(a) Is qualified by the following:

1. Has certified firefighter status; and

2. Has submitted a completed application that has been approved by his fire chief; and

3. Is a high school graduate or the equivalent; and

4. Has had four (4) years experience as a firefighter; and

(b) Is further qualified by having completed one (1) of the following:

1. Has completed a minimum of thirty-two (32) hours of an educational methodology course; or

2. Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or

3. Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or

4. Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by this commission.

(2) Certification term. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on renewal forms as outlined in Section 8 of this administrative regulation.

(b) Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period, or reattend the thirty-two (32) hour educational methodology course and taught a minimum of thirty (30) hours.

Section 4. Level III Fire Protection Instructors. Persons certified as Level III fire protection instructors shall be authorized to deliver training to fire departments or to train persons for Level I and II certification and to train Level II instructors to become Level III fire protection instructors.

(1) Requirements for certification. An individual may be certified by the commission as a Level III instructor if the fire department in which the applicant is a member has applied to be recognized by the Fire Commission to be a Level III instructor and satisfactory written evidence is submitted to the commission that the individual meets the following criteria:

(a) Has submitted a completed application and resume;

(b) Is presently certified as Level II fire protection instructor;

(c) Is interviewed by the commission, if requested;

(d) Shows sufficient evidence of having assisted with the delivery of at least one (1), forty (40) hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor.

(2) Certification term. Certification shall be made for a period of three (3) years unless the commission determines that the certification shall be revoked, for cause.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor to submit an application for renewal prior to expiration of certification. Renewal forms shall be as outlined in Section 8 of this administrative regulation.

(b) Renewal applicant must have delivered at least one (1) educational methodology course or instructional technique class during his three (3) year certification period.

(c) Renewal applicant must have taught a minimum of sixty (60) hours during his certification period.

(d) Renewal applicant must attend at least one (1) instructor trainer workshop approved by the commission.

Section 5. Fire Protection Instructor Current Status. (1) A fire protection instructor who is certified by the commission pursuant to this administrative regulation shall be reclassified as a Level II fire protection instructor and shall conform to this administrative regulation.

(2) To retain current certified status as an instructor, an individual shall meet the renewal criteria for the level for which he is certified.

(3) If an instructor does not meet Level II requirements, he shall revert to Level I status.

(4) If an instructor does not meet the criteria for Level I status, his fire protection instructor certification shall be revoked.

Section 6. Revocation of Certification. The commission may revoke certification if, after reasonable notice and a hearing, it is determined that there was:

(1) A material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification;

(2) Falsification of training records; or

(3) An act of misconduct, negligence, malfeasance.

Section 7. Appeal. (1) A fire protection instructor notified of an intent to revoke his instructor certification, may request a hearing before the commission by submitting, in writing, within fifteen (15) days from the date of receipt of the letter of notification.

(2) A hearing shall be conducted at the next regularly scheduled meeting of the commission or within thirty (30) days, whichever is first.

(3) The decision of the commission shall be rendered in writing within ten (10) days of the termination of the hearing.

Section 8. Application and Renewal Forms for Fire Protection Instructor. (1) Level I certification application and renewal form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL I FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__

Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level I Fire Protection Instructor shall be for the purpose of delivering training to the fire department of which they are a member.

Requirements for Certification: An individual may be certified by the commission as a Level I Fire Protection Instructor if satisfactory written evidence is provided to the commission that he is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate):
- Two (2) years experience as a firefighter. Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a sixteen (16) hour National Fire Academy Instructional Techniques class or its equivalent conducted by:

Agency:
Instructor (signature, #):

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the fire department to see renewal process is completed if recertification for that instructor is desired.
(b) Renewal applicant must have taught a minimum of thirty-two (32) hours during his three (3) year certification period or reattended a sixteen (16) hour National Fire Academy Instructor Class or equivalent approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of applicant:

XXXXXXXXXXXXXXXXX

(2) Level II Certification Application and Renewal Form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL II FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__
Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level II Fire Protection Instructor shall be for the purpose of delivering training to the fire department within the commonwealth upon invitation by that agency.

Requirements for Certification: An individual may be certified by the commission as a Level II Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate)
- Four (4) years experience as a firefighter, Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a minimum of thirty-two (32) hours educational methodology course, meeting the objectives of NFPA 1041 conducted by:

Agency:
Instructor (signature, #):
or
Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter (attach copy of certification)
or
Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum.

Name of institution
Department head signature:
or
Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by the fire commission. (attach copy of certificate)

Agency:
Agency head (signature):

Certification Terms:

Certification shall be made for a period of three (3) years, unless the commission determines sooner that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the individual instructor and his agency to submit this application for renewal.

(b) Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period or reattended a thirty-two (32) hour educational methodology course and taught a minimum of thirty (30) hours.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of Applicant:

X X X X X X X X X X X X X X X X X X X

(3) Level III Certification Application and Renewal Form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL III FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__
Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level III Fire Protection Instructor shall be for the purpose of qualifying Level I and Level II Fire Protection Instructors and preparing Level II Fire Protection Instructors to become Level III Fire Protection Instructors.

Requirements for Certification: An individual may be certified by the commission as a Level III Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she:

- Attach a copy of resume'.
- Presently certified as Level II Fire Protection Instructor
- Applicant has successfully assisted in delivery of an educational methodology class based on NFPA 1041 conducted by:

Agency:
Instructor (signature):

- Applicant may be required to undergo an interview by the commission.

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the individual instructor to submit this application for renewal prior to expiration of certification.
(b) Renewal applicant must have delivered at least one (1) educational methodology course during his three (3) year certification period; and
(c) Renewal applicant must have taught a minimum of sixty (60) hours during his certification period.
(d) Renewal applicant must attend at least one (1) instructor trainer workshop approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of Applicant:

Section 9. 815 KAR 45:030 is hereby repealed.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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

Contact person: Wayne Jordan

(1) Type and number of entities affected: 850 paid and volunteer fire departments and firefighters therein who wish to become instructors.

(a) Direct and indirect costs or savings to those affected: Provides establishment of credential of firefighters who desire to be certified to teach other firefighters.

1. First year: No cost or savings are involved.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Submitting an application to be certified as a fire training instructor to be compatible with the new training records system.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None presently accepting applicants for certification as an instructor.

(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: Is tiering applied? Yes. Requirements vary from a Level I instructor to a Level III instructor.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Office of the State Fire Marshal**

**815 KAR 46:011. Repeal of 815 KAR 46:010.**

RELATES TO: KRS 17A.250, 95A.262

STATUTORY AUTHORITY: KRS 13A.310, 95A.262

NECESSITY AND FUNCTION: 815 KAR 46:010 is no longer necessary because the requirements for volunteer fire department aid are covered in 815 KAR 45:080.

Section 1. 815 KAR 46:010, Aid to fire departments, is hereby repealed.

DENNIS L. DECKER, State Fire Marshal
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: February 9, 1993

FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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

Contact person: Wayne Jordan

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No cost or savings are involved.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Does not apply to repeal.

**Cabinet for Human Resources**
**Office of Inspector General**

**902 KAR 20:073. Clinics: ambulatory care.**

RELATES TO: KRS 216B.010 to 216B.131 , 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: The administrative regulation establishing standards for ambulatory care clinics, 902 KAR 20:072, was found deficient by the Interim Joint Committee on Health and Welfare at its November 25, 1991, meeting. The finding of deficiency resulted from the removal of the requirement for an R.N. to be on site during the hours of the ambulatory care clinic's operation as found in Section 3(3)(a) ("Personnel"). Legislation to establish the deletion of the R.N. requirement in KRS Chapter 216B was not enacted during the 1992 regular session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:072 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and health services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for ambulatory care clinics, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same

as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:072, because: (1) Only the section relating to R.N. staffing was found deficient; (2) this administrative regulation requires R.N. staffing; and (3) it is required, by legislative mandate, by KRS 216B.042.

Section 1. Definitions. "Clinic" means ambulatory care clinic.

Section 2. Scope of Operations and Services. An ambulatory care clinic is an establishment with organized medical staffs, permanent facilities and medical services to provide diagnosis and treatment for patients who have a variety of medical conditions and do not currently require inpatient care.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the clinic and for compliance with federal, state and local laws and regulations pertaining to the operation of the clinic.

(b) The licensee shall establish written policies for the administration and operation of the clinic.

(c) The licensee shall establish lines of authority and designate the person who will be principally responsible for the daily operation of the clinics.

(2) Policies.

(a) Administrative policies. The clinic shall have written administrative policies covering all aspects of the clinic's operation, including:

1. A description of organizational structure, staffing and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the clinic's program;

5. A description of the administrative and patient care records and reports;

6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and

7. A policy to specify the provision of emergency medical services.

(b) Patient rights policies. The clinic shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances.

2. Is informed of services available at the clinic and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements.

3. Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research.

4. Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.

5. Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract.

6. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(3) Personnel.

(a) The clinic shall have at least one (1) licensed physician and at least one (1) registered nurse present during operating hours. A licensed physician shall be designated as medical director.

1. Physician. The physician shall be in active practice, and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. Physicians employed by or having an agreement with the clinic to perform direct medical services shall be qualified to practice general medicine (e.g., general practitioners, family practitioners, obstetrician/gynecologists, pediatricians, and internists). Physicians employed by or having an agreement with the clinic to perform direct medical services should be members of the medical staff, or hold at least courtesy staff privileges, at one (1) or more hospitals with which the clinic has a formal linkage agreement.

2. Nurse. The registered nurse(s) shall provide services within their respective scope of practice pursuant to KRS Chapter 314.

(b) In-service training. All clinic personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel, regular in-service training programs, emphasizing professional competence, and the human relationship necessary for effective health care.

(c) At least one (1) person, in addition to the physician, shall be on duty who has current certification in cardiopulmonary resuscitation.

(4) Medical records.

(a) The clinic shall maintain medical records to contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all physical examinations, laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, to include reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The clinic shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the clinic shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(5) Linkage agreements.

(a) The clinic shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the clinic. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the clinic, provisions for appropriate coordination of discharge planning with clinic staff, and provisions for the clinic to receive a copy of the discharge summary for each patient referred to the clinic.

(6) Utilization review and medical audit. In order to determine the appropriateness of the services delivered there shall be a written plan for utilization review developed by the clinic which specifies the frequency of reviews and composition of the body conducting the review.

(7) Quality assurance program. The clinic shall have a written quality assurance program designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating patient care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the licensee and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the clinic;

(c) Identify the aspects of care that the clinic provides;

(d) Identify indicators, and appropriate clinical criteria that can be used to monitor these aspects of care;

(e) Collect and organize data for each indicator;

(f) Evaluate the care in order to identify problems or opportunities to improve care;

(g) Take actions to correct identified problems or to improve care;

(h) Assess the effectiveness of the actions taken and document the improvement in care; and

(i) Communicate relevant information to other individuals, departments, or services as to the quality assurance program.

Section 4. Provision of Services. (1) Hours of operation and coverage. Scheduled hours of the clinic's operation shall reasonably accommodate the various segments of the population served. Provisions shall be made for scheduled evening hours and/or weekend hours.

(2) Basic services. The clinic shall provide directly (except as noted) at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs (including prenatal and postnatal care) of all age groups;

(b) Emergency services.

1. The clinic shall provide emergency medical services during the regularly scheduled hours for treatment of injuries and minor trauma.

2. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his own health;

(e) Chronic illness management; and

(f) Laboratory, x-ray and treatment services provided directly or arranged through other providers.

(3) Telephone screening and referral. The clinic shall provide telephone screening and referral services for prospective patients after regularly scheduled hours of operation.

(4)(a) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

1. Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand, except as permitted by Centers for Disease Control and the Occupational Safety and Health Administration guidelines.

2. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

3. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b) The ambulatory clinic shall establish specific written policies regarding handling and disposal of all wastes.

1. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

2. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

3. Any incinerator used for the disposal of wastes shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: January 22, 1993

FILED WITH LRC: January 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 18, 1993, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: Seven

(a) Direct and indirect costs or savings to those affected:

1. First year: Staffing expenses will be increased by costs of registered nurse to be present during operating hours.

2. Continuing costs or savings: Staffing expenses.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: A written quality assurance program will result in an increase of these requirements.

(2) Effects on the promulgating administrative body: Any effects should be minimal.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: None since reprinting of regulation is part of this agency's continuing budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B requires that the cabinet promulgate licensure standards for all health care facilities.

(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: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. These are minimum licensure standards and as such apply equally to all facilities.

**CABINET FOR HUMAN RESOURCES**
**Office of Inspector General**

**902 KAR 20:291. Alzheimer's nursing homes.**

RELATES TO: KRS 216B.010 to 216B.131, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.071, 216B.105
NECESSITY AND FUNCTION: The administrative regulation establishing standards for freestanding facilities limited to the care of patients with Alzheimer's or related disorders, 902 KAR 20:290, was found deficient by the Administrative Regulation Review Subcommittee at its August 6, 1991, meeting. The finding of deficiency resulted from the staff/patient ratio specified in Section 3(10)(c)2 ("Staffing requirements"). Legislation to establish the staff/patient ratio in KRS Chapter 216B was not enacted during the 1992 regular session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:290 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and health services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for freestanding facilities for patients suffering from Alzheimer's or related disorders, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:290, because: (1) Only the section relating to the staff/patient ratio was found deficient; (2) this administrative regulation does not establish or require a staff/patient ratio; and (3) it is required, by legislative mandate, by KRS 216B.042.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Facility" means a nursing home facility constructed pursuant to KRS 216B.071.

(4) "License" means an authorization issued by the Cabinet for Human Resources for the purpose of operating a nursing home and offering nursing home services.

(5) "PRN medications" means medications administered as needed.

(6) "Qualified dietician" or "nutritionist" means a person certified pursuant to KRS 310.010 or 310.030.

(7) "Patient" means any resident admitted to an Alzheimer's facility.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope. (1) Facilities constructed and operated pursuant to KRS 216B.071 and this regulation shall provide care to residents with a primary diagnosis of Alzheimer's disease or related disorder.

(2) Facilities constructed pursuant to KRS 216B.071 shall be constructed in accordance with 902 KAR 20:046 and this regulation.

(3) These facilities shall be subject to the provisions of KRS 216.535 to 216.593.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of allegations of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 620.

(c) Use of restraints. The facility shall have a written policy that addresses minimizing the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a primary diagnosis of Alzheimer's disease or related disorder. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term care facility, if done within seven (7) days prior to admission.

(c) Upon admission the patient and a responsible member of his family or legal respresentative shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and

agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When a patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of life threatening emergency), shall be transferred promptly to an appropriate facility to meet the patient's needs, or services shall be contracted for from another community resource.

(c) If changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to a setting which provides appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted at least thirty (30) days in advance of the transfer or discharge of any patient.

(e) If the patient is transferred, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include an employment application and a record of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and Social Security Number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. Responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Although emergency scheduling may require substitution of staff, every effort should be made to provide residents with familiar staff members in order to minimize resident confusion.

5. Volunteers shall not be counted to make up minimum staffing requirements.

6. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who is a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job description for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nursing assistants, and certified medication aides are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

7. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and staff assignments, and whenever possible accompanying physicians when visiting patients.

8. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during the nurse's tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

9. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

10. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in clause a. of this subparagraph may be

assigned duties appropriate to their training and experience.

11. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

12. The facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services;

c. Developing and implementing the activities program and therapeutic recreation; and

d. Developing and implementing staff training program.

13. Community family support coordinator. A social worker licensed pursuant to KRS 335.090 or who has two (2) years of social work supervised experience in a health care setting working directly with individuals; or similar professional qualifications shall be utilized whose functions shall include:

a. Evaluation of resident's initial social history on admission;

b. Utilization of community resources;

c. Conducting quarterly family support group meetings; and

d. Identification and utilization of existing Alzheimer's network.

14. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infection can no longer be transmitted.

(e) Orientation and in-service training. All staff members and consultants shall have documented training in the care and handling of Alzheimer's patients, including at least:

1. Eight (8) hours of orientation to cover the following:

a. Facility Alzheimer's policies;

b. Etiology and treatment of dementias;

c. Stages of Alzheimer's disease;

d. Behavior management; and

e. Communication.

f. Resident's rights.

2. Quarterly continuing education is required, six (6) hours of which shall be in Alzheimer's disease or related disorders.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and Social Security Number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or long-term care facility if done within seven (7) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication, dosage, administration method, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at medically appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call and shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses or licensed practical nurses, aides, assistants, and certified medication aides. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect;

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities or more often if necessary;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self-care, transfer and ambulation activities;

d. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapists.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Comprehensive assessment of resident needs. Nursing personnel shall make a comprehensive assessment of a resident's needs which describes the resident's capability to perform daily life functions and significant impairments in functional capacity:

1. The comprehensive assessment must include at least the following information:

a. Medically defines conditions and prior medical history;

b. Medical status measurement;

c. Functional status;

d. Sensory and physical impairment;

e. Nutritional status and requirements;

f. Special treatments or procedures;

g. Psychosocial status;

h. Dental condition;

i. Activities potential;

j. Cognitive status; and

k. Drug therapy.

2. Assessments must be conducted no later than fourteen (14) days after the date of admission and promptly after a significant change in the resident's physical or mental condition.

3. Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(3) Comprehensive assessments and care plans.

(a) Comprehensive assessments.

1. The facility shall make a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

2. The comprehensive assessment shall include at least the following information:

a. Medically defined conditions and prior medical history;

b. Medical status measurement;

c. Functional status;

d. Sensory and physical impairments;

e. Nutritional status and requirements;

f. Special treatments or procedures;

g. Psychosocial status;

h. Discharge potential;

i. Dental condition;

j. Activities potential;

k. Rehabilitation potential;

l. Cognitive status; and

m. Drug therapy.

3. Frequency. Assessments shall be conducted:

a. No later than fourteen (14) days after the date of admission;

b. Promptly after a significant change in the resident's physical or mental condition; and

c. In no case less often than once every twelve (12) months.

4. Review of assessments. The nursing facility shall examine each resident no less than once every three (3) months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

5. Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (4) of this section.

(b) Accuracy of assessments.

1. Coordination. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment with the appropriate participation of health professionals.

2. Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(c) Comprehensive care plans.

1. The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

2. A comprehensive care plan shall be:

a. Developed within seven (7) days after completion of the comprehensive assessment;

b. Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

c. Periodically reviewed and revised by a team of qualified persons after each assessment.

3. The services provided or arranged by the facility shall:

a. Meet professional standards of quality; and

b. Be provided by qualified persons in accordance with each resident's written plan of care.

(d) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

1. A recapitulation of the resident's stay;

2. A final summary of the resident's status to include items in subsection (2)(b) of this subsection, at the time of the discharge that shall be available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

3. A postdischarge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(4) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services. These services may be contracted for from another community resource.

(b) If therapy services are provided they shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services;

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests.

b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

c. Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

d. Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, handrails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(5) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(6) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within fourteen (14) days. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314) or by personnel who have completed a state approved training program, from a state-approved source. The administration of oral and topical medicines by certified medicine aides shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV, and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician. There shall be no PRN orders for restraints. Understanding that measures to prevent wandering may infringe on patient rights, care shall be exercised in the use of physical or mechanical devices or chemical restraints.

a. Restraints shall not be used as punishment, as discipline, as a convenience for the staff, or when not required to treat the

resident's medical symptoms, or as a substitute for staff.

b. Physical or mechanical restraints that require lock and key shall not be used. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. During the patient's normal waking hours, the patient must be excercised during release periods. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be comfortable and easily removed in case of an emergency.

c. The specific purpose and time-limited order for any restraint shall be written and reviewed according to facility policy. The frequency of such renewal shall not exceed sixty (60) days.

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Center for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent, broken, or otherwise manipulated by hand.

(iii) The containers for sharp wastes shall either be incinerated on- or off-site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

(v) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 5:055.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rebella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(7) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(8) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: Patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(9) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Subject to the requirements of KRS 216B.071, where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending

physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(10) Patient activities. Activities suited to the needs and interests of patients shall be provided. Provision shall be made for activities which must be appropriate for the needs and interests of each resident, taking into consideration his or her specific impairment, state of disease. Activities programs shall be available to all residents and shall be planned and documented in the patient's interdisciplinary comprehensive assessment.

(a) The activity leader shall have specialized educational preparation concerning the care of an Alzheimer's patient, and use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patient's request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(11) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(12) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service, with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the approriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. 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. Between meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as over-bed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

4. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

5. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate

from bed linens.

6. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

7. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

Section 5. Alzheimer's Facility Requirements. (1) The care of residents with Alzheimer's disease and other cognitive disorders require increased security and visual access. Measures to protect the residents from harm and to prevent them from leaving designated areas without supervision shall include frequent in-person observation of each resident and may also include the use of wide angle mirrors closed-circuit television monitors, and alarm systems.

(2) In addition to the required facility specifications in 902 KAR 20:046, the following shall be provided:

(a) Control doors, if used for security of the residents, shall be forty-four (44) inches in width each leaf, and swing in opposite directions. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(b) Locking devices may be used on the control doors if the following criteria are met.

1. The locking device, which shall not be a keylock device, shall be electronic and shall be released when the following occurs:

a. Upon activation of the fire alarm or sprinkler systems;

b. Power failure to the facility; and

c. By pressing a button located at the main staff station and at the monitoring station.

2. Key pad or buttons may be located at the control doors for routine use by staff or service.

(3) Access to outdoor areas shall be provided and such areas shall be enclosed by walls or fencing that do not present a hazard.

(4) Any security measures taken to provide for the safety of wandering patients shall be as unobtrusive as possible.

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: January 22, 1993

FILED WITH LRC: January 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 18, 1993, of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: Two

(a) Direct and indirect costs or savings to those affected:

1. First year: Staffing and other overhead expenses.

2. Continuing costs or savings: Staffing and other overhead expenses.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Enabling statute required construction to be completed by July 15, 1991.

(b) Reporting and paperwork requirements: There will be such requirements since these Alzheimer's facilities will need to document compliance with these standards.

(2) Effects on the promulgating administrative body: The costs should be minimal. Additional surveys will be incorporated into the agency's workload.

(a) Direct and indirect costs or savings:

1. First year: $500 for printing costs.

2. Continuing costs or savings: None since reprinting of regulation is part of this agency's continuing budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These are minimum licensing standards applicable to all facilities.

(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: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. These are minimum licensure standards and as such apply equally to all facilities.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**
**Division of Community Safety**

**902 KAR 55:090. Exempt anabolic steroid products.**

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substances is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Anabolic Steroid Products. Any compound, mixture or preparation containing an anabolic steroid exempted from the provisions of the federal controlled substance law as set forth in the November 24, 1992, edition of the Federal Register Vol. 57, No. 227, Drug Enforcement Administration, Department of Justice, Section 1308.34, Exempt Anabolic Steroid Products, pages 55090 and 55091, incorporated by reference, shall be exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Administrative Register is published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.34 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and is available for public inspection and copying Monday through Friday, 8 a.m. - 4:30 p.m. A copy of the Federal Register is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: January 22, 1993

FILED WITH LRC: January 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 23, 1993, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by March 23, 1993 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Masten Childers, II, Commissioner, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation lists products exempt from the provisions of KRS Chapter 218A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 21 USC 802(41)(A), (B); 812(c)(e) and 21 CFR 1308.34.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in CFR 1308.33.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

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

**904 KAR 2:111. Repeal of 904 KAR 2:110.**

RELATES TO: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6, 34 CFR 668.2-.4, 690.2(1)-(6), 45 CFR 400.40-.104, 400.140-.156, Federal Register, Volume 57, Number 202 (pages

47718 through 47739)

STATUTORY AUTHORITY: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6, 34 CFR 668.2-.4, 690.2(1)-(6), 45 CFR 400.40-.104; 400.140-.156

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. The administrative regulation 904 KAR 2:110, Refugee assistance, sets forth the eligibility criteria and types and amounts of assistance for refugees residing in Kentucky. A waiver which was approved by the Department for Health and Human Services, Office of Refugee Resettlement, permitted the cabinet to cease operation of the refugee Cash and Medical Assistance (CMA) Program effective March 1, 1992. Further, the notice in the Federal Register, Volume 57, Number 202 (pages 47718 through 47739), is an announcement of the Office of Refugee Resettlement's plan to replace the CMA program with the Private Resettlement Program (PRP). Under the PRP program, state agencies will no longer be responsible for administering refugee assistance. The PRP program will become effective January 1, 1993. Therefore, administrative regulation 904 KAR 2:110, Refugee assistance, is no longer necessary.

Section 1. 904 KAR 2:110, Refugee assistance, is hereby repealed.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, Secretary

APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1993, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Mike Robinson

(1) Type and number of entities affected: None. Currently, the Refugee Cash and Medical Assistance Program is inactive. Refugees who are potentially eligible for AFDC, Medicaid, or Food Stamp benefits are not denied access to such programs. In addition, eligible refugees who require cash and medical benefits, but are not eligible for the state's AFDC or Medicaid programs, may obtain such assistance through Catholic Charities of Louisville. Catholic Charities is authorized and funded by the Office of Refugee Resettlement to provide assistance to refugees through a Fish/Wilson Demonstration Project. This project is similar to the Private Resettlement Program (PRP) which will be implemented nationwide on January 1, 1993.

(a) Direct and indirect costs or savings to those affected: None. Refugee cash and medical assistance is 100 percent funded by the federal government.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Office of Refugee Resettlement is intent on restructuring refugee assistance by contracting directly with private nonprofit agencies for administration and case management rather than with the states. Accordingly, states will become ineligible to administer refugee assistance. Therefore, no other alternatives 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Federal statutes mandate that eligibility requirements for the Refugee Resettlement Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, Volume 57, Number 202 (pages 47718 through 47739).

2. State compliance standards. This administrative regulation repeals the administrative regulation governing the eligibility criteria for refugee assistance as prescribed by the Office of Refugee Resettlement. There are no differing state compliance standards.

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. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

**Cabinet for Human Resources**
**Department for Social Insurance**
**Division of Management & Development**

**904 KAR 2:370. Technical requirements; job opportunities and basic skills.**

RELATES TO: 45 CFR 250.0, 250.10, 250.11, 250.30, 250.32, 250.33, 250.34, 250.35, 250.36, 250.41, 250.43, 250.44, 250.45, 250.46, 250.48, 250.60, 250.61, 250.63

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations

in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of the Job Opportunities and Basic Skills (JOBS) Program participants as they relate to eligibility for receiving AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual who:

(a) Determines ongoing AFDC or Medical Assistance (MA) or Food Stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;

(b) Aids the JOBS participant by brokering services for the participant;

(c) Identifies and resolves barriers to the extent possible; and

(d) Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS Program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the preceding sixty (60) months;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Exemptions. All AFDC recipients are required to participate in the JOBS Program if the program is available in the county of residence unless the recipient:

(1) Is a child who:

(a) Is under age sixteen (16); or

(b) Attends, full time, an elementary, secondary, vocational or technical school (unless he was enrolled in school through the JOBS Program);

(2) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS Program. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is sixty (60) years old or older;

(5) Resides in a county which offers the JOBS Program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(7) Is working at least thirty (30) hours per week;

(8) Is pregnant and the child is expected to be born within the following six (6) month period;

(9) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in Section 5(3) of this administrative regulation;

(10) Is a full-time Volunteers in Service to America (VISTA) volunteer.

(11) Is the parent or other relative personally providing care for a child under six (6) years of age unless:

(a) The agency assures that child care will be guaranteed; and

(b) The state agency guarantees that required program participation will not exceed twenty (20) hours per week.

Section 3. Volunteers. All persons in active JOBS counties as specified in Section 2 of this administrative regulation may volunteer to participate in the JOBS Program.

(1) The DSI shall give first priority for JOBS services to volunteers within the target population to be served, as described in Section 1 of this administrative regulation.

(2) A volunteer who is exempt, as specified in Section 2 of this administrative regulation, and who stops participating without good cause shall lose priority status for JOBS services if he volunteers at a later time.

(3) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in Section 10 of this administrative regulation.

Section 4. Components. With the exception of the component described in subsection (8) of this section, all JOBS counties shall offer the following services and activities:

(1) Education below the postsecondary level shall include:

(a) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(b) Basic and remedial education that shall provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(c) Education in English proficiency to allow employment commensurate with his employment goal for an individual who is not sufficiently competent to:

1. Understand;

2. Speak;

3. Read; or

4. Write the English language.

(2) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(3) Job readiness activities that help prepare a participant for work by familiarizing him with workplace expectations, attitudes and appropriate behavior.

(4) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for a participant.

(5) Job search which provides group and individual assistance and training with job-seeking activities.

(a) Job search shall be provided in a group setting where a participant is taught job-seeking skills, and may include a phone bank from which he contacts potential employers;

(b) Individual job search shall be offered as needed to provide on a one-to-one basis:

1. Counseling;

2. Information;

3. Dissemination; and

4. Support;

(c) Participation in the job search component shall not exceed eight (8) weeks in any period of twelve (12) consecutive months unless it is required as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(6) On-the-job training (OJT) in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(a) A participant in OJT shall be compensated by the employer at the same rate as a similarly situated employee or trainee;

(b) The cabinet shall subsidize the wage through payments to the employer for OJT, not to exceed an average of fifty (50) percent of the wages paid to the participant during the training;

(c) At the conclusion of the OJT, the participant shall be retained as a regular employee.

(7) Community Work Experience Program (CWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) A CWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) The maximum number of hours of participation shall be determined by dividing the family's monthly AFDC grant amount by the greater of the federal or state minimum wage;

(c) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of CWEP participation; and
2. At the conclusion of participation in the component.

(d) After an individual has been assigned to CWEP for nine (9) months, the individual shall not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

1. Federal minimum wage;
2. State minimum wage; or
3. The rate of pay for an individual employed in the same or similar occupations by the same employer at the same site.

(8) Alternative Work Experience Program (AWEP) which provides unpaid work experience and training to assist a participant to move promptly into regular public or private employment.

(a) An AWEP assignment shall be limited to a for-profit health care facility such as:

1. Home health agency;
2. Hospital; and
3. Nursing home.

(b) AWEP placements shall be developed and monitored by contracting agencies.

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs.

(d) The AWEP component shall not be mandatory in every JOBS county.

(e) AWEP participants are required to participate a minimum of twenty (20) hours per week.

(f) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of AWEP participation; and
2. At the conclusion of participation in the component.

(9) Post secondary education may be provided if:

(a) The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

(b) The participant has or is capable of achieving the basic literacy skills required by the occupation; and

(c) Jobs are available in the specific occupation for which education and training is needed.

Section 5. JOBS Participation Requirements. (1) Assessment.

(a) When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager;

(b) The case manager shall make an assessment of the individual's employability;

(c) Other agencies will assist in the assessment process as needed;

(d) The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers;

(e) The assessment shall be based on:

1. Education, child care and other supportive service needs;
2. The individual's proficiencies, skills deficiencies, and prior work experience;
3. The needs of the family of the participant; and
4. Any other relevant factors.

(2) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

(a) An employment goal for the participant;

(b) Services to be provided by the agency (including child care);

(c) JOBS activities to be undertaken to achieve the employment goal; and

(d) Other needs of the family.

(3) Special participation requirements for education.

(a) An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

1. The parent is not otherwise exempt; and
2. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

(b) For purposes of this requirement, the exemption contained at Section 2(9) of this administrative regulation shall not qualify the participant for exemption from JOBS activities.

(c) The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

1. The parent fails to make good progress in successfully completing educational activities; or
2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

Section 6. Self-initiated JOBS Activities. The agency shall consider an individual self-initiated if the definition specified in 904 KAR 2:017 is met. This shall include the following provisions:

(1) These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training.

(2) Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan.

(3) Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity.

(4) The participant shall be attending:

(a) A JTPA-funded training program; or

(b) A public source or private institution that is:

1. Licensed by the Kentucky Board for Proprietary Education; or
2. Recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) An associate degree program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;
2. Adult basic education;
3. Literacy; or
4. Other educational activities which could lead to employment.

Section 7. Good and Satisfactory Progress. (1) Each participant in an education or training component shall meet good and satisfactory progress requirements.

(2) Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution.

(3) Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

(a) Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers.

(b) High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

(c) Vocational school. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

(d) Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, not to exceed a twelve (12) month period.

(e) College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

Section 8. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in Section 10 of this administrative regulation).

(2) The conciliation shall be conducted by:

(a) The DSI;

(b) The DES; or

(c) Both agencies jointly.

1. During conciliation, the agency shall determine if additional services are needed to assist with JOBS participation. 2. Participation shall be monitored for thirty (30) days following the issuance of form JOBS-204.

3. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 9. Good Cause. (1) Good cause for noncompliance in the JOBS Program or refusal to accept employment shall be found if:

(a) The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

(b) Dependent care is:

1. Not available for a dependent child;

2. Not available for any incapacitated individual living in the same household as a dependent child;

3. Not available or nonreimbursable for a nondependent child over age six (6).

(c) The agency determines that employment would result in a net loss of cash income.

1. The family's gross income less necessary actual work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment was made; and

2. Child care costs exceeding the child care disregard shall be considered in the determination;

(d) The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

(e) Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

(f) Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

(g) Illness of another household member requiring the presence of the participant;

(h) The participant is temporarily incarcerated;

(i) The agency determines there is discrimination by an employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(j) Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or

2. The presence of a risk to the individual's health or safety;

(k) Wage rates are decreased subsequent to acceptance of employment;

(l) The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

(m) A household emergency occurs, such as:

1. Death of a member of the immediate family;
2. Entry into a spouse abuse center;
3. Natural disaster;
4. Court appearance;
5. Victim of crime; or
6. Flooded basement; or

(n) The participant receives a temporary military assignment;

(o) The participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls.

(2) The duration of good cause criteria may vary according to individual circumstances.

Section 10. Sanctions. (1) When a nonexempt AFDC recipient fails to comply with the requirements of the JOBS Program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

(a) Fails without good cause to participate in required activities, including but not limited to:

1. An interview;
2. An assessment; or
3. Employability plan development;

(b) Fails without good cause to participate in the program;

(c) Refuses without good cause to accept employment; or

(d) Terminates employment or reduces earnings without good cause.

(2) A person who has failed to comply without good cause shall be sanctioned, as follows:

(a) The participant is excluded from JOBS activities and services:

1. For the first failure to comply, until the failure to comply ceases;

2. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

3. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

(b) In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin.

(c) In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and the second parent, unless the second parent:

1. Is exempt for reasons other than those in Section 5(9) and (11) of this administrative regulation;

2. Is participating; or

3. Has volunteered to participate in JOBS.

(d) A sanctioned individual shall participate in a designated

activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 11. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS Program are being incorporated effective May 1, 1993. These forms include:

(a) PA-33C, revised 1/92;
(b) PA-218A, revised 2/93;
(c) PA-219, revised 11/92;
(d) JOBS-105, revised 6/91;
(e) JOBS-201, revised 1/91;
(f) JOBS-202, revised 10/90;
(g) JOBS-204, revised 8/91; and
(h) JOBS-205, revised 8/91.

(2) Material incorporated by reference 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
FONTAINE BANKS, Secretary

APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1993, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this committee in writing by March 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 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 on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Masten Childers, II, Commissioner, Department of Law, 275 East Main Street, 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900.

## REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: The type of entities affected will be those JOBS participants who are placed into the AWEP component. We anticipate that this will be a minimal number of individuals as this component will only be offered in one county.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No more than currently required for other components.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $500 annually for insurance costs to cover those participants and any supportive services that would normally be paid for participants. No new supportive service costs will be incurred. Additionally, each participant placed into the AWEP component will be required to have hepatitis inoculations. This will cost approximately $240 per person but will be paid from the area development district (ADD) fees and will not be an additional expense. These fees have already been budgeted.
2. Continuing costs or savings: $500 annually and any supportive services that would normally be paid. See first year regarding mandatory inoculations.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No more than currently required for other components.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 250.0, 250.10, 250.30, 250.32, 250.33, 250.34, 250.35, 250.36, 250.41, 250.43, 250.44, 250.45, 250.46, 250.48, 250.60, 250.61, 250.63
2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.
3. Minimum or uniform standards contained in the federal mandate. States are required to operate a JOBS program and by doing so may offer optional components such as the alternative work experience program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
## Minutes of the February 1 and 2, 1993 Meeting

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 1, 1993, at 2 p.m. and Tuesday, February 2, 1993 at 10:45 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 January 4 and 5, 1992 meeting were approved.

**Present were:**

**Members:** February 1, 1993: Representative Tom Kerr, Chairman; Senator Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates. February 2, 1993: Representative Tom Kerr, Chairman; Senator Gene Huff; Representatives Jim Bruce and James Yates.

**Guests:** Senator Tom Smith, Gary S. Cox, Joyce A. Bryan, Richard Casey, Paul P. Borden, Kentucky Higher Education Assistance Authority; Roy Peterson, Kentucky Council on Higher Education; Lowell W. Clark, Frank Willey, Department of Personnel; William P. Hanes, Pam Johnson, William E. Johnson, Kentucky Retirement Systems; Victor Fox; Attorney General's Office; Susan Stopher, Board of Accountancy; Dennis Conniff, Morgan Kelly, Petroleum Storage Tank Commission; Dr. Ralph Bonnette, Kentucky Board of Pharmacy; Nathan Goldman, Board of Nursing; Pat Abell, Mark Guilfyle; Office of the Governor; Steven Brigandi, James Hale, Pat Haight, Joy Morgan, Millie Ellis, H. D. Uriel Smith, Kenneth Hines, John E. Hornback, Phillip Shepherd, Natural Resources and Environmental Protection Cabinet; Jack Damron, Louis Smith, Steve Smith, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; C. T. Woodward, Dr. Harold Byers, Kentucky Board of Chiropractic Examiners; Kevin Noland, Gary Gressen, Randy Kimbrough, Deparment of Education; Dwayne T. Gatewood, Beverly H. Haverstock, Workforce Development Cabinet; George Parsons, Vocational Rehabilitation; Larry M. Greathouse, Valerie Salven, Walter W. Turner, Department of Workers' Claims; Phyllis Fannin, Don Mills, Howard Lubow, Claude Rhorer, John David Myles, Dennis Jones, Jack Kaninberg, Bill Castle, Lori Flanery, Jeff Shaw, Public Service Commission; Mike Fulkerson, Kentucky Racing Commission; Judith G. Walden, Department of Housing, Buildings and Construction; Gary Bevill, Robert Calhoun, Michael Cheek, Barbara Coleman, Dudley J. Conner, Anita Moore, Ralph Von Derau, Eric Friedlander, Ked Fitzpatrick, Anita Travis, Sue Tuttle, Cabinet for Human Resources; Libby Harvey, Robert Chenoweth; KSBA; Cindy Rausch; Marnel Moorman, Kentucky Education; Gilbert L. Ebel, Jacquie Miller, Denver Farley, William Graham, Charles K. Preston, Kentuckiana Coalition of Injured Workers; Nancy Galvagni, Kentucky Hospital Association; Lola Davis, Jewish Hospital, Inc., Edward L. Holloway, Workers' Compensation Advisory Council; John Underwood, Marie Alagia Cull, Kentucky Association of Health Care Facilities; Mark P. Miller, William M. McAllister, Ronald P. Rogers, Dr. John D. McClellan, Dr. Dan McCaslin, John D. Strange, Arthur C. Anderson, L. Dale Musson, Dr. Arnold H. Goldman, Robert A. Whittaker, Gary A. McCoy, Dr. Bing Crosby, Dr. John W. Hennessy, Vincent G. Rettay, Lawrence V. Hambrick, Ralph E. Sinning, R. J. Burkart, L. B. Payne, John A. Arnold, Jr., Terry L. Henderson, Phil Patton, Dr. Dana C. O'Neil, Cranston Porter, A. M. Krause, Allen Cardwell, Kentucky Association of Chiropractors; Frank Hideg, National Board of Chiropractors; Alvin D. Wax, Kentucky Chiropractic Society; Dr. R. M. Peace, Chiropractic Workers' Compensation for Kentucky; Arthur F. Aston, Jr., Douglas Howell, Homer V. Bailey, Stella M. Bailey, Don Wilkinson, Larry Smith, Stacy K. Edwards, Quentin C. Margison, Ramona L. Valentine, Mary C. Smith, Cathy C. McClellan, Bill Kennon, Julie C. Mager, Joseph T. Gover, R. D. Barnes, D. Kurt Adams, Steven M. Harrison, Susan M. Adams, Dr. Vince Palladino, Virgil H. Barker, Jim Sullivan, Benjamin J. Howard, Dr. K. Jeffrey Miller, R. J. Elder, Forest L. Toftness, Michael Thompson, Chiropractics; Cynthia Bailey, The Gap; Christine Nimmo, Equitable Bag Co.; Bill Doll, Jackson and Kelly for Kentucky Medical Association; John Frith Stewart; Kentucky Association of Electric Cooperatives; Forest M. Skaggs, Kentucky Telephone Association, Ronald L. Willhite, Robert Hewett, Kentucky Utilities Co., Bruce F. Clark, Kentucky Power Company; Charles A. Wheeler; Anne Catron, Queen of Hearts Tattoo; The Renegade, Tattoos by the Renegade; Ronald Higdon, General Lee's Tattoo Studio; Judith Spaulding, Ricky E. Wallace, Communication Workers of America; Joe Buonadonna, ACTWU; Mike Helton, Kentucky Petroleum Council; Vince Guenthner, Louisiville Water Company; Jim B. Byrum, Kentucky Education Association; Kenneth R. Thompson, City of Frankfort; Ron Scott, Kentucky League of Cities; Kathleen Moore; Samuel L. Perkins; James C. Rogers, City of Frankfort; Jan L. Gould; Kentucky Retail Federation; Donna C. Slone, Tank Fund News; Dennis Bailey; Don Satterly, Kentucky Gasoline Dealers Association; Carl Metz; Todd Stephens, Hall & Assoc., Inc.

**LRC Staff:** Greg Karambellas, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman.

**The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:**

**Kentucky Employees' Retirement Systems: General Rules**

105 KAR 1:040. Actuarial assumptions and tables. Pam Johnson, manager of the Kentucky Retirement Systems made the following presentation. "Mr. Chairman during the last meeting there was some confusion, I've got some charts if it will make it any easier for any of the members. We tried to show that the total annual payroll for the KERS non hazardous is $998 million. Even though the state is paying 7.65 by the budget bill. The rate is actually 8.66. This regulation will allow the rates to remain at 8.66. If we continue to value our assets at book value the rate will have to go up to 9.17, with the difference in the nonhazardous group being $5 million. For our hazardous people we have 12 agencies in KERS in hazardous with a total payroll of $67.8 million . Their current rate has been set by the board at 17.55. That rate has been constrained by the Budget Bill to 15.05. Even with this regulation the rate will have to be increased to 17.86. Without it it would be increased to 18.54, for a difference of $461,000. In the State Police system, you have a payroll of $31 million. Their current rate is set by the board at 21.84 even though they are only paying 19.57. With the regulation their rate would be able to remain the same. Without it, it would be increased to 23.18 for a difference of $819,000. So for the state systems including the KERS and KERS hazardous and State Police we're looking at a difference of $5.9 million in the next fiscal year.

The county systems have been paying the rates. The Budget Bill did not constrain the county system. In CERS nonhazardous excluding the school boards they are paying 8.82 with the regulation they could remain at 8.82. Without it it could be increased to 9.21,. for a difference of 1.8 million. The cities and counties and local governments are going to have to pay. We had 174 school boards that participate in CERS for their non certified employees. That would be their janitors, their clerks, their cafeteria workers and people like that. Currently they are paying 8.82. It would allow to stay at 8.82 . Without it they would also go to 9.21. Their difference here is $1.4 million. It is our understanding from the state Department of Education that 7% of this money is general fund dollars. You also have hazardous individuals in CERS, 129 of those agencies. They have a total payroll of almost $140 million. Their rate is 18.47, with the regulation it will go to 18.49. Without it it will go to 19.37 for a difference of 1.2 million. So you are looking at a total in county government of $4.5 million additional required beginning July 1 without the regulation. Chairman Kerr asked "when you say without this regulation it would go to a

certain rate. What requires it to do that?" Ms. Johnson responded "currently the assets are valued at book. The regulation sets it at an average market value over a five year period. So if the regulation does not pass we will remain at book value. Book value sets the new rate.

Chairman Kerr asked "Where is that formula? Does it appear in the statutes"? Ms. Johnson replied "Valuation of the assets is set by regulation".

Chairman Kerr continued "On the KERS non hazardous you said the Budget Bill sets it at 7 something. How is it 8 something"? Ms. Johnson answered "This committee passed the regulation that separated this. All the rates we administered were set within that one regulation.

Chairman Kerr asked "So by regulation we overrode the Budget Bill"? Bill Johnson representing the agency explained "What it is, you have a state statute that says that the Board of Trustees of the Retirement System, based upon an actuarial analysis that is made will set the rate. That's where the 8.66 comes from. The actuary had recommended that in order to properly fund the system, and the Board had adopted that figure. That of course differs from the Budget Bill which set it at 7.65. We take the position that in view of the fact that the statute sometimes ago was amended and said there was involitate contract that was in existence because you have employees contributing money; that the legislature through the Budget Bill, in the manner in which it passed the law, did not have the authority to supersede and override the existing statutory law which gave the duty of setting the rate to the Board".

The discussion then turned to a cost estimate of $23 million for the biennium, and two West Virginia court cases mentioned as being on point.

Pat Abel representing the Governor's office offered testimony to distinguish the cases. "I don't want to bore you with a bunch of case law. The WV GA made zero contributions to their retirement system over a period of several years. This GA has not done that. This GA appropriated last session approximately $140 million to the retirement systems. They wanted 160 million so the cases aren't on point. The system promulgated a regulation last summer which in effect does the same thing this regulation does. It set the rate at 8.66 per cent payroll notwithstanding the fact that the appropriation act said this biennium, this biennium alone, the rate will be 7.65. That regulation was objected to or had a note attached to it by the State Government Committee. The system is now before you with a regulation which, in effect, I think Pam will admit, does the exact same thing that regulation did. I will urge you to uphold the appropriations act as expressing the intent of the GA that this biennium the rate remain at 7.65 for the basic group". Ms. Johnson responded, that this regulation does not set any rates; it only addresses the method of valuing the assets of the retirement program.

Mr. Abel agreed that that part of the regulation is excellent, but Section 2 tells the actuary how to do his calculations and the effect of those calculations are the rates which for KERS non hazardous result in a rate of 8.66 in excess of the rates the GA has established in the appropriation.

Discussion then centered on the revaluation with Bill Haynes, representating the agency, pointing out tht the regulation seeks to address a real funding problem with the health insurance fund.

Mr. Johnson said: "What the actuary has proposed to do is this one time where these realized gains are going to be realized is to have those funds addressed and transferred to the health insurance fund to help the funding of that program. We are not addressing it and we need to. There is a portion of the employer contribution rate that goes to the health insurance fund. But where we are now we have about $140 million worth of assets with a 2 billion dollar liability. Our liability is growing at a much faster rate than our assets in that program".

Representative Bruce asked if there were a possibility of any compromise that they would be able to work out with just the first part. Mr. Abel stated the Governor's office can support the first part of the regulation.

Ms. Johnson stated "The Board has approved the regulation as it is. We aren't authorized to change where we are right now. Our actuary has already recommended to the Board that if this change is made, the insurance change has to be made at the same time. We had this issue during the 92 Session, our actuary spoke to several committees that he could not favor making the change without addressing the health insurance fund".

Senator Huff asked Mr. Abel from his perspective, the executive perspective, does the Board have the legal right from the statutes to do what's proposed to do in this particular.

Mr. Abel said in his opinion they do not. The GA for this biennium has said what the rate will be. The effect of this regulation is, the result of this regulation, will be a rate in excess of what the GA said the rate will be.

Bill Johnson said "And I agree with Pat that the legislature can do that. The problem is they didn't do it. Because the statute spells out that there is a way that you suspend and you make a finding of fact about a short fall and you set out the reasons and in fact in 1992 the GA did just that in certain other areas of the Budget Bill, but as to this section of the Budget Bill it made no such finding. Therefore, since it made no such finding as is required by statute it could not be suspended and was not suspended".

Mr. Abel responded he thinks the GA followed the law when it suspended the Retirement Systems authority to set these regs, and I don't believe they did not follow the law.

Ron Scott, of the Kentucky League of Cities, stated that they are in support of the regulation, more particularly the first section of the regulation that would authorize the recognition of the valuation system other than book value. He said it is their understanding that this approach is used by many other state retirement systems and it seems to be a rational approach and it is one that they support. He said "We think that not only is it reasonable to take this approach, it seems that to do otherwise would impose a significant burden upon our cities and counties and CERS system for making additional contributions and we think we at this particular point and time are ill equipped to make those additional contributions".

James Rogers, Finance Officer for the city of Frankfort, stated "we are, in fact, in the CERS plan. Our budget is something like $12 million, half of that figure is for salary, approximately 25% of our salary is for fringe benefit. This one change would cost the city an additional $36,800. This would be in addition to what we are currently paying. If the proposed amendment does not pass it will cost us an additional 36,800 of which we do not have".

A Motion by Representative Bruce and seconded by Representative Allen to attach a letter based on the fact that the regulation exceeds statutory authrotiy because it exceeds the budget bill cap of 7.65% carried.

**Department of Education: Office of Learning Programs Development: Instruction**

704 KAR 3:450. Textbook and instructional material adoption process. Representative Bruce asked for an explanation of the differences in the process of selecting materials. Kevin Noland, representing the Cabinet, stated that what this regulation does is amend our regulation to conform to state statute because now the school council can decide on the use of those funds to include not only textbooks but instructional materials.

Libby Harvey, representing the Kentucky School Boards Association, spoke against the regulation. She stated "I'm here today to speak to two regulations that we believe exceed the authority granted by the statute. The first one is concerning the regulations' interpretation of the requirements for which the board of education can review the textbook and instructional plan that the school council will develop. In KRS 156.439(2), the language of the statute says that the local board approves the school council's instructional plan. If it does

not approve that plan, the council may appeal to the commissioner. But the limitation which is in the regulation is not included in the statute, and that limitation in regulation is that the local board can only review the school council's plan as to funding resources. There is no such limitation under statute. This concerns us because, as you know, on many occasions, local citizens have concerns about textbooks and instructional materials, and they address those concerns often to the board of education. This regulation, in contradiction to the authorizing statute, would allow the local board only to review and respond based on whether there is funding available. We would ask that an amendment be made to the regulation in section 14(6) and (8) to remove the language "sufficiency of funding" that would allow the local board only to review as to funding".

Following a brief discussion, Chairman Kerr asked the Department's response. Kevin Noland replied "The regulation is consistent with the statute. I think what controls here is the statute, and that is under KRS 163.452(h) it makes it clear that decisions on textbooks and instructional materials . . . Representative Bruce and I were just talking about this a few moments ago . . . are decisions to be made by the school council. What this regulation does is, if anything, it is in favor of school boards because it makes it real express that when you're talking about money, a school council can have all these dreams about the textbooks and instructional materials they'd like to have for their students but they've got to be realistic and work within the allocated funds. And that's what we've tried to emphasize in this regulation ... that it's subject to approval of the plan for the purchase of textbooks and instructional materials by the local board to determine if there's sufficiency of funds. In terms of choosing the textbooks and instructional materials, the statute makes it pretty clear that it's a school council decision. So we're not willing to make that change. We're trying to be consistent with the statute."

After several minutes of questions and answers, with the Chair then reading KRS 160.345(2)(c) and (h) to the Subcommittee a motion was made by Representative Yates, and seconded by Representative Allen to attach a letter making a determination that the regulation exceeds statutory authority. Motion carried.

**Learning Support Services**

704 KAR 7:110. School council policy rejection; appeal procedure. Background information on the regulation was provided by Kevin Noland, representing the Cabinet. Chairman Kerr then commented "You have the five items listed there where the school board can overrule the school council if it's inconsistent with state or federal statutes, concerns for health and safety, and so on. I've got a document that was provided to me, and it's my understanding that the Education Coalition came up with these 5 items. But also, the Education Coalition is made up of not only the school board association but also KEA and the Prichard Committee and so on. They also have there that those items should be subject to review by the school board plus a determination of basic educational merit. I'm wondering why that was left off this regulation. Mr. Noland responded that the issue on educational merit wasn't in the listing because they couldn't reach a consensus on that".

Marnel Moorman, President of the Kentucky Education Association, read a prepared statement which supported the regulation. He offered the following remarks: "I am Marnel Moorman, President of the Kentucky Education Association and its 34,000 members. With me this morning is Tammy Dowler who is our assistant director of instruction and professional development programs. Let me say, Chairperson Kerr and the administrative regulations subcommittee, KEA welcomes the opportunity to discuss with you the issue of school councils. We strongly encourage as we did to the state board that this regulation as it was adopted not be changed. We believe that this issue is central to the success of KERA. We believe that the state board's action to adopt this regulation sends a clear message of support to thousands of teachers, parents and principals who are now working hard on school councils and committees. We believe that this regulation is consistent with what the legislature intended. We would remind you that the legislature intended that KERA would change the way schools operate. If all school councils' decisions were subject to veto by the local school boards, then nothing would have changed in the governance of our Kentucky schools. The legislature created school based decision making because they believe that the best decisions were those made by those most directly affected by those decisions. To give school boards veto authority over all council decisions would negate this philosophy. KEA worked hard in the 1992 legislature to help legislators craft a compromise on this issue which would give councils real authority and give school boards appropriate oversight. KEA encouraged legislators to adopt the compromise and our members to support it. We believe this compromise found in Senator Ed Ford's amendment to HB 182 clearly gives councils authority in certain areas and gives local school boards authority in certain other areas. We believe that this regulation as adopted by the state board is consistent with the Ford amendment. Finally, KEA would remind you that school boards retain significant authority in many areas under the law and under the adopted regulation. Among the issues boards can still decide are hiring the superintendent, setting the district tax rate and budget, determining student assessment and reporting procedures, determining staff levels, adopting the school calendar, guiding professional development, and deciding where and when school buildings will be built and who will build these buildings. We believe this school board authority gives these local officials and the taxpayers they represent appropriate decision making ability. We believe it is also appropriate to give some autonomous decision making to teachers, yes teachers, parents and principals, especially in those areas that most directly affect each individual school student. These are the 8 areas outlined in KRS 160.345(2)(j). They deal with school curriculum, school schedule, assignment of staff and students, student discipline, instructional practices, extracurricular activities. As I said at the beginning of my remarks, school council authority is central to success of KERA. Schools will receive rewards and sanctions based on their improvement or lack thereof beginning in 1994-95. If schools are to be held accountable, then they should be able to make decisions to assure that success and rewards will come from that success. Whether it's the primary program or portfolio development or use of technology, we are finding that the best schools with the smoothest KERA implementation, are those where the teachers, the parents, are involved in significant ways in decision making in working with our most precious resource, our children. Thank you for the consideration of the KEA position."

Cindy Roush, a parent from Oldham County, spoke in opposition to the regulation: "First, I believe that this regulation will allow the state board of education the ability to overrule local board of education decisions. This would undoubtedly be the beginning of a state-run system of removing both the community and parents from the process of education, and that's wrong. Secondly, I'm opposed to this regulation because there is a whole group of taxpayers who are eliminated from representation. They are the very same people that are required to pay for KERA. They are the people who don't have children in the system, that do not have the ability to elect someone on site-based council. The site-based councils are not elected by them or accountable to them. To me this means taxation without representation and I believe that's wrong also. Thirdly, and perhaps the simplest reason, at least I thought it was the simplest reason, that this regulation distresses me is that it violates HB 182 which was passed in 1992. The amendment to HB 182 clarifies the school council policies are to be consistent with district board policies. I seem this regulation as an attempt to misuse and circumvent the law. Lastly, and perhaps the most personal to me, is that as a parent, if I am not satisfied with a decision that is made at site-based council, whether it's policy or regulation or anything else, there is no longer the ability for me to go to the local level for an appeal. I have to come to Frankfort...."

Bob Chenoweth, representing the Kentucky Association of School Superintendents spoke in opposition to the regulation. He pointed out

that unless site based council policies are consistent with district board policies then the policies would be at odds. His example was in the area of student conduct: "I give you just one brief example at this point to highlight why I believe the statutory construction that is being given here is at odds with the school law provisions. This subcommittee is familiar with those matters set out in (j) (1-8). Indeed one of those matters that a council may address and should address deals with discipline. Still we have on the school law statutes a provision in KRS 160.181 that says that teachers and administrators are to hold children to a strict account for their conduct going to and from school and so forth, on school grounds, and off school grounds, and it continues that those teachers and administrators shall hold the students to a strict account for their conduct in accordance with the regulations adopted pursuant to KRS 160.290 by the board of education".

Mr. Chenoweth pointed out that it is the local board that would be sued over a health and safety issue, a liability issue, a financial responsibility issue.

Mr. Chenoweth stated that there is no enabling statute to do what this regulation is attempting to do; no authority for the state board to perform binding arbitration between the local council and the local board. He concluded by saying that "There is no statutory basis for finding that councils have exclusive authority in any given area, let alone those eight 160.345(2)(j)1-8. There is a case before the Kentucky Court of Appeals right now where that very issue was decided by local circuit court. Looking at the amendments that were made in 1992, and that court has determined that the language in 2(c) says and means exactly what it says. And that is, that policies of a council indeed are to be consistent with the policies and regulations of a local board of education. This proposed regulation by the state board of education without any reservation in my mind, is an attempt to try to undo that circuit court decision and undo it prior to the court of appeals of this Commonwealth, to consider that issue that is squarely before it. I submit to this subcommittee that this regulation is inconsistent with law and it does as far as a separation of powers, in purporting to give that kind of authority to an executive body, it is unconstitutional".

Libby Harvey, representing the Kentucky School Boards Association spoke against the regulation. She said "The idea that a local board of education can veto every decision, policy, or program developed by a school council is a misunderstanding of the role and function of a board of education policy. Much of the board's policy is required by law, explicitly required by law, and it is required to be published public record. So it is a framework that is announced to all parties in the district. It binds the board of education and those parties who deal with it. We believe that includes school councils. It does not mean that the board comes back then and retrospectively vetoes every decision and program that a school council develops any more than state regulation allows a state agency to come back and veto local board decisions. It offers the parameters, the guidelines up front. The second thing that I think needs to be clarified is the education coalition agreement did not include an appeal to the state board. And I participated in that discussion. We were trying to offer guidelines for a satisfactory resolution at the local level. And there was indeed consensus on the idea that educational merit should be included. We don't believe that a vote against this regulation is a vote against school based decision making, school councils or teachers. We believe that it's a vote in favor of local control, tax paying citizens who, under this regulation, will have no policy voice for their community's schools. And on that basis we would ask your consideration that this regulation is in excess of law".

Chairman Kerr asked if school council meetings are open meetings under the law, to which Mr. Noland replied "Yes".

Chairman Kerr summed up the the discussion by saying: "School councils are an important part of education reform, and I admire the people who serve on them. They take a lot of time, and I admire them for the time they take to serve on them. The question is, can the school council adopt policies which are inconsistent with basic school board policy? Again, it gets back to the section, subsection (c) which says, "school councils shall have responsibility to set school policy consistent with district board policy." Looking at Mr. Chenoweth's argument about school discipline: If you take your position, Kevin, then that means that those statutes are in conflict because this seems to say that (j) is not subject to school board policy, and one of those is discipline, then that conflicts directly with the other statute. Then that meeting would result in one of those being unlawful. I guess, to be consistent, you'd have to read section (j) with section (c), I think. Also, for this committee to be consistent, based on what we did with the previous regulation, we said that section (c) had to be read in conjunction with the part about textbooks under section (h), I think that this committee needs to take the same action on this regulation that it took on the previous one. The big thing here is that the legislature needs to address this and clarify it in the next session. We know what's going to happen. Whatever we do, the regulation's still going into effect. But at least if we attach a letter to it that'll at least require the legislature to look at this, and I think it needs to be clarified".

Mr. Noland responded that he thought with the concerns raised, we can read the statutes consistently with each other.

On a motion by Representative Yates and seconded by Representative Allen that a letter be attached to the regulations on the grounds that the regulation exceeds statutory authority, the motion passed.

**Workers' Compensation Board**

803 KAR 25:095. Statements for medical services. Several people signed up to speak in opposition to this regulation. Lola Davis, representing Jewish Hospital in Louisville, stated that the statute requires payment for medical services within 30 days, while this regulation allows carriers the opportunity to delay payment by making numerous requests, carrying additional administrative costs and impacting cash flow.

Bill Doll, representing the Kentucky Medical Asspciation, stated there is no statutory authority to do what they are attempting to do here, it contravenes legislative intent, mentioning that many of the things in this regulation were in SB 322 of the 1992 Session, which didn't pass, that we are approaching a Special Session on health care, that this Section 1 regulation conflicts with 803 KAR 25:091(10), and the tolling events in this regulation are contrary to statute.

Nancy Galvagni, representing the Kentucky Hospital Association, stated her concerns mirrored those of Ms. Davis and Mr. Doll. She said she felt the tolling events gives an open-ended opportunity for payers to delay paying bills.

Jackie Miller, an injured employee, spoke to the need for something to be done about billing. She said the self-insured company she worked for has refused to pay bills with-in 30 days, the bills were turned over to collection agencies, which in turn forced her to obtain a lawyer, and it caused her a hardship.

Danny Farley, president of the Kentuckiana Coalition of Injured Workers, stated the self-insured company he worked for also would not pay the medical bills. He said "We cannot access health care, hospital insurance won't pay, workers' compensation insurance won't pay.

Chairman Kerr said the question in the minds of the Committee members is how do you justify this regulation when the statute, 342.020, says that payment is to be made within thirty days of the receipt of the statement for services. "First let's say I commend what the Board is trying to do here, because I know you're trying to contain costs and that's what we're all going to be looking for in this health care session that we're probably going to be doing in March. We do know that these measures were in Senate Bill 328, and that didn't pass. Apparently you are trying to do that by regulation, and the question is, doesn't this run counter to the existing legislation, the existing statute?"

Mr. Turner responded "Good point Representative Kerr. Of course, .020(1) provides a thirty day rule from the period running from the receipt of the statement for services from the medical provider. In our regulations we've defined statement for services. That wasn't defined before, and it's critical because the statement for services must afford the carrier or self-insured information from which it can determine whether or not that particular medical bill is compensable. The statute is silent with respect to any provisions which might toll the running of this thirty days. We have found in practice that the thirty day period without tolling is commercially unreasonable for this reason: The medical provider will send the bill to the carrier, the carrier will get that bill perhaps 15 to 20 days later. The carrier may have legitimate questions with respect to the work-relatedness of the condition for which treatment was rendered, may have legitimate questions with respect to the nature of the medical services, may have legitimate questions if the provider is actually the physician for the worker. The strict thirty day rule doesn't allow enough turnaround time. It's not a commercially reasonable time to answer those sort of inquiries with respect to the bill. What we've done is afford some tolling where there is a reasonable grounds to make an information request, and likewise the response to the information request is required by .020 and other provisions of the statute, so that's our statutory authority. We need to, procedurally, in that we are being inundated and flooded before our Administrative Law Judges with disputes, motions, and complaints relative to medical bills simply because the carriers have to file the motions within the strict thirty days and can't reasonably obtain information to determine the compensability of the bill. We want the bills paid promptly. At the same time we want to avoid litigation, and that is the overall plan of the regulations as we've proposed putting one with the other. The problems of Mr. Farley and Ms. Miller are real. There are real problems out there, and a lot of those problems under the existing statute are caused by being under the gun of the thirty day rule, without any tolling grace whatsoever. They file the motion to contest because they don't have an adequate time to respond, and it delays the payments of bills rather than expedites it. Of course another section of the statute gives the Board the authority to promulgate regulations which expedite the payment of bills."

After a brief discussion Chairman Kerr expressed "some concerns that we're looking at a health care Session, in which the Governor has indicated that Worker's Comp. is going to be a part of that. We may be looking at 24-hour coverage, or whatever. It seems to me this is a major change to be making without legislation through the regulation process. Again, it may be admirable to be attempting to do it, but the question is, is there statutory authority and does it meet with legislative intent? It's hard to say that when Senate Bill 328 did not make it through, and died for whatever reason there might have been in the last Session. To come with this as a regulatory change, rather than a statutory change, and to do it just before we may change everything next month, I have questions in my mind about it".

Mr. Turner responded "We're not attempting by regulation to make wholesale changes relative to the statute. We're attempting to implement the statute that we have.

803 KAR 25:096. Selection of physicians and treatment plans. Discussion began with making a motion to adopt an amendment that the following language be included as Subsection (4) of Section 3.803 KAR 25:096:, Motion passed.

Representative Bruce offered another amendment to which the Board did not agree. Several people signed up to speak against this regulation.

Jackie Miller, an injured employee, spoke against the limitation of the right to change physicians, and the time requirements imposed on pain treatment. Chairman Kerr explained to her that the time requirement didn't limit pain treatment but referred to the treatment plan, to which Judge Turner agreed.

Judge Turner responded to the change of physician limitation. "Basically the scope of this regulation is this, that in order to introduce concepts of accountability to workers' compensation health care, we have the concept of a designated physician who will be overall responsible for the care of the patient. That designated physician is a physician selected by the employee. In the event the first selection of this physician does not work out, the employee is free to make a selection again. And, I would point out to you that the existing statute says that the employee may select the physician who treats them. It doesn't say that he can choose 25 or 5. So, if the employee is dissatisfied with the second physician that he or she has chosen to treat him or her for the effects of the work related injury, after that point in time, he has to request the carrier, or the self-insured, for permission to change physicians. That would be the third change. And, we put in the regulation that the carrier can't unreasonably refuse to consent to the change. It gives the employer a little bit more leverage perhaps, but at the same time it reduces our problem of doctor shopping by claimants, which is a real problem in any sort of medical system where you have litigation going on at the same time. The designated physician may send the patient to as many consulting physicians as that physician deems necessary, so the employee is not stuck with, let's say family practitioner to treat a psychiatric condition. It can be more than one physician working on the claimant at the same time, but they will all be under the general auspices of a single physician. Someone will be accountable and responsible".

Dennis Farley stated he was definitely opposed to the limitation on the selection of doctors.

Lola Davis tendered the following comments: "I have some written comments here, if you will bear with me. First of all, Jewish Hospital feels that the board has failed to conduct a full regulatory impact analysis, because they have not justified the need for treatment plans nor assessed alternative methods to a blanket treatment plan requirement. Even when all parties agree that extended care is needed, as well as the administrative costs that hospitals will incur to comply with the proposed managed care requirements and patient inconvenience from delays in receiving treatment, the board has not conducted any study of the need for this regulation. They have only vaguely referenced increased overall litigation without any specifics as to how this regulation will alleviate this, as compared to the enormous costs which will be imposed on medical providers. There is no statutory authority for the workers' compensation board to impose a managed care program or treatment care requirement by regulation. The Legislature considered, but failed to enact, amendments in the 1992 Session, to restrict employees' physician selection, and did not ever consider a treatment plan requirement. Passage of this regulation will impose a system that will be unworkable for providers and injured workers. The board has chosen to ignore that their proposed managed care system will require an elaborate pre authorization system for medical providers to verify appropriateness of referrals and the existence and timely filing of required treatment plans. While the board contends that they are not mandating pre authorization, the statement of consideration clearly indicated their intent that all treatment be coordinated by the designated physician and that treatment plans be prepared. These activities, however, simply cannot be carried out without hospitals employing pre authorization to verify that a patient has been referred by the designated physician or that a specialist referral was approved. The existence of any treatment plan requirement will also have to be verified, since the statement for services regulation will deny hospital payment if a physician has not filed this on time. A significant number of hospital staff will have to be involved in tracking down this information. Also, even if verbal approval can be received, the board has failed to include any proper paper trail or other mechanism for the medical provider to document receipt of such approval to the payer, who will be denied payment for unauthorized care. The result will be chaos for medical providers and injured workers, who will fact substantial treatment delays awaiting verification of this information, particularly if the physician cannot be reached to obtain authorization. The regulation will permit carriers to perform utilization review without

meeting standards which the General Assembly enacted for the review of care under private health insurance. In 1990, the General Assembly passed two bills requiring private review agents to be registered by the Cabinet for Human Resources and meet minimal standards including accessibility by a toll-free line 24 hours a day, maintaining written procedures and criteria for reviewing appropriateness of care, and most importantly, using qualified medical personnel in conducting reviews. Because carriers will be performing utilization review when they review and approve treatment plans, Jewish Hospital requests that the board adopt their own requirements for carrier to meet the same standards as private review firms, since CHR's regulation specifically exempts workers' compensation review activities. This proposed regulation, which only requires an agent with the carrier to be available by phone during normal business hours, is grossly inadequate and provides no protection for injured workers to have an appropriate review of their care and case.

Bill Doll, representing the Kentucky Medical Association, stated that putting the doctor into a "designated physician" role is an untenable position ripe for lawsuits. He stated it is not like a managed care situation because in that role there is a contract of responsibilities. Mr. Doll stated that the "physician designation card" could be interpreted as a contractual relationship that might be excluded under the physician's malpractice policy, adding that that also would be an untenable position. Mr. Doll also mentioned problems he saw with the treatment plan, the second designated physician, and the definition of physician used.

Judge Turner commented that they had adopted uniform billing forms, allowed a treatment plan to consist of charts, consultation, reports and other documents which medical practitioners ordinarily have in their patience chart now, or should have.

Nancy Galvagni, representing the Kentucky Hospital Association, said they had concerns about this regulation from a different perspective of the hospital. She said they were not opposed to manage care and the concept of manage care. She said they have been on record at the associations at using manage care because it can save cost. However, they have a concern with this regulation because it attempts to oppose a managed care system without statutory authority and secondly without any procedures to where it can be a reasonable process. She said, going back to Senate bill 328 which was in the last session of the General Assembly, that would have made some statutory changes to allow a managed care program to be put together and for whatever reason, that bill failed. Somebody must have thought there needed to be a statutory change to make such a sweeping thing as to restrict employee freedom of chose. She said they did not think the word "The" that has been referenced in .020 was ever intended to mean you can have only one physician, that has not been the practice and to change that would require statutory action. The concept of the gate keeper approach has been used in hospitals which have a lot of experience with this approach, where you have a designated physician and that physician controls all further referrals to other doctors as well as to hospitals. She said when somebody has a designated physician and that physician sends them to the hospital and they present their card to the hospital the hospital has no way under this regulation to know if in fact that doctor had sent that person. She said there is no paper trail in this regulation that when someone shows up at our door that they know that designated doctor has sent them there. Other systems "the ken-pack system" which is the managed care system that Medicaid has used since 1986 for example requires a telephone system and the physician who is sending the person has to call ahead to give the authorization number and that put on the bill so when that bill is sent in to the Medicaid agency they know the care was coordinated and that the referral was appropriate. She said there was no system for utilization review, and there are no standards anywhere that say who is reviewing that care, and it doesn't even have to be a medical person. She said they raised this at the hearing and requested for managed care program to have standards as there is in private health insurance. She said you can have people turning down these treatment plans that don't even have medical knowledge. She said they are not opposed to management care and they have met with the board and tried to point out the operational problem and these are not details that can just be worked out after the regulation is in play. Providers have to know what the responsibilities are, what the authorization system is going to be, who is going to review the plans of care, these are the fine details that need to be part of this regulation. She said they were here today speaking in opposition to this regulation today because if this regulation goes through it is going to be chaos for everyone.

John Stewart, an attorney, said he came to speak specifically to this issue today and he believes the proposed regulation is in complete and total derogation of the statute and the mandate given by the legislature. He asked the Board to remove the limitation of selection of physician, saying the Board's interpretation of "the physician," is too narrow.. Mr Stewart concluded by saying the regulation is not only unfair but it is completely contrary to direct legislative intent and he asked that the regulation if adopted only be adopted with the changes he had suggested and if it can't be done that way then until such time as it can be propounded with those changes he asked that it be rejected.

Representative Jim Yates stated that he did not believe the regulation does conform to legislative intent. He moved they put a letter on it, and this motion was seconded.

The Chair said they would take the motion if seconded but still had three people signed up who wanted to speak.

Phil Patton said he was at the meeting on behalf of the Kentucky Association of Chiropractors. He was in agreement with the comments made by Mr. Doll, Mr. Stewart and others and would question the statutory authority of the board to limit the choice of treating or designating physicians after the first change, and he point to the fact that KRS 342.020 subsection 3 is the only limitation on the injured employee's right to choose a treating physician and that provides for the employee to request that the ALJ make determination that the existing treatment is inappropriate or delaying recovery and also he wanted to remind the subcommittee of the General Assembly not adopting SB 328. So they would asked the board to delete subsection 3 in this regulation and this would retain the designated physician concept without limiting the statutory freedom of choice that injured workers have the other area of concern that his clients have is section 4(2). He said they had no real problem with the treatment plan concept and the treatment plan as defined in section 1 subsection 4 because they think this is good medical chiropractic practice. He said their problem was section 4 subsection 2 which adds whole new sections and requirements if the treatment is being offered by a chiropractor and we know they are talking about chiropractors because they talk about treatment by manipulation or adjustment and that section goes on to say that a treatment plan of a chiropractor will detail and how treatment will terminate in the absence of physical improvement.. He said they feel that is a violation of KRS 342 which guarantees the worker the choice of a provider for the cure and the relief of the effects of his injury and this is a direct limitation on that and in violation of National Pizza vs. Curry. He urged that this section, 4(2) be deleted in its entirety so chiropractors would be subject to the same treatment plan requirements as other providers.

Alvin Wax, an attorney representing the Kentucky Chiropractor Society, said he would defer most of his comments to those who have spoken before him, though he said the greatest should be to Ms. Miller and Mr. Farley for whom he thinks this statute is all about.

Representative Yates asked that his motion stand and address the bill in the 1994 session.

At this point the Board indicated it would be willing to amend Section 3(3). Representative Yates said he would withdraw his motion and Senator Huff withdrew his second. Judge Turner offered to amend Section 3(3) concerning the change of designated physicians to add "Administrative Law Judge or". The Subcommittee approved

a motion to amend Section 3(3) by deleting the word "prior" and inserting the words "or an administrative law judge's".

After a brief discussion, motion was made by Representative Allen, seconded by Senator Huff to attach a letter of objection to the regulation as amended on the grounds that the regulation exceeds statutory authority.

Senator Huff said he wanted to publicly say he appreciated the direction worker's comp. board is moving in. He felt there were some problems with the bill in terms of interpretation of it with regard to the statute as they believe to be legislative intent and then the procedures that are being followed. He said his purpose in seconding this motion for a letter today is in the hopes that they will began to see that they are going to have to do something about the tremendous health cost in this state and resolve this some way in the health care reform session.

Senator Smith stated that he had contacted the board during the last session concerning chiropractic and sent some letters and since then there are been some law suits filed by a certain chiropractor and some of the folks on the board have sent letters trying to correct that and he said they needed to take action because if not, rest assured they will take action in 1994 session. The form letter problem has got to be addressed.

Chair then asked Representative Bruce if he had anything to say. He answered no.

Chairman then said there was a motion and a second and he asked for a voice vote with no one opposing this.

**The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:**

**Kentucky Higher Education Assistance Authority: Kentucky Loan Program**

11 KAR 3:001. Definitions. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); (2) Insert the US Code citation in Sections 1(21), (22), (23), (27), (29), (52), (57) and (61), pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); and (3) Delete the references to "he or she", "him or her"and "himself or herself", and insert "he", "him"or "himself", pursuant to KRS 13A.222(4)(j).

11 KAR 3:015. Borrower eligibility. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); (2) Delete the references to "he or she", "him or her" and "himself or herself", and insert "he", "him" or "himself", pursuant to KRS 13A.222(4)(j); and (3) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency, thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

11 KAR 3:025. Eligible program. This administrative regulation was amended to:(1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); and (2) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency, thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

11 KAR 3:035. Maximum loan amounts. This administrative regulation was amended to insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2).

11 KAR 3:045. Permissible charges by lenders to borrowers. This administrative regulation was amended to:(1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); and (2) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency, thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

11 KAR 3:055. Obtaining and repaying a loan. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2); and (2) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency, thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

11 KAR 3:061. Repeal of 11 KAR 3:060. This administrative regulation was amended to insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2). In response to a question by Representative Allen, Cabinet personnel stated that this administrative regulation was being repealed because of a change in federal law.

**KHEAA Grant Program**

11 KAR 5:001. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations. This administrative regulation was amended to insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2).

11 KAR 5:140. KTG award determination procedure. This administrative regulation was amended to insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2).

**Council on Higher Education: Public Educational Institutions**

13 KAR 2:060. Degree program approval; equal opportunity goals. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; 2) KRS 13A.220(4) format requirements; and 3) sample equations were inserted in Section 2(2)(a) and (b), to illustrate how to calculate the annual progress using one of the two methods specified in Section 2(2)(a) and 2(2)(b).

**Board of Accountancy**

201 KAR 1:063. Certification of experience. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; and 2) KRS 13A.220(4) format requirements.

201 KAR 1:130. Examination application procedure. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; and 2) KRS 13A.220(4) format requirements.

**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. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2); (2) Divide subsections by arabic numbers in parentheses and paragraphs by lower case letters of the alphabet in parentheses pursuant to KRS 13A.220(4); (3) Require initial and subsequent application cycles to be published in newspapers with statewide circulation pursuant to KRS 424.130 (This amendment will assure notification of the public by newspaper at least thirty-eight days prior to any application being due.); (4) Require subsequent application cycles each year the fund exceeds $335,000; and (5) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency, thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

401 KAR 49:230. Waste tire trust fund grant program. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); (2) Divide subsections by arabic numbers in parentheses and paragraphs by lower case letters of the alphabet in parentheses pursuant to KRS 13A.220(4); (3) Require initial and subsequent

application cycles be published in newspapers with statewide circulation pursuant to KRS 424.130 (This amendment will assure notification of the public by newspaper at least thirty-eight days prior to any application being due); (4) Require subsequent application cycles each year the fund exceeds $335,000; and (5) Explain in detail in the tiering statement that failure to apply this administrative regulation equally could result in arbitrary action on the part of the agency thereby implicating the "equal protection " and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 2 and 3 of the Kentucky Constitution.

Representative Allen asked if 401 KAR 49:220 and 401 KAR 49:230 placed any limit on the number of waste tire facilities that could be placed in a county. Cabinet personnel stated that the administrative regulation: (1) Allows a county to request more than one loan or grant for setting up a waste tire facility; (2) The problem is the size of the fund; and (3) There is not a great deal of money available for distribution pursuant to 401 KAR 49:220 and 401 KAR 49:230.

Secretary Shepherd pointed out that: (1) There was approximately $750,000 currently available for distribution; and (2) The fund distribution criteria is designed to allow both urban and rural applicants to receive funds.

In response to a question from Representative Allen, Secretary Shepherd stated that there would not be loans or grants in more than one county at a time. The criteria for distribution of waste tire trust funds requires: (1) Consideration of the volume of waste tires; (2) The area to be served; and (3) The number of individuals to be served by each waste tire facility. Incentive is given to provide for regional waste tire facilities.

Representative Allen asked what the Cabinet did with waste tires. Secretary Shepherd stated that old tires are beginning to be used for filler for industrial projects and mixing with pavement, but there is not enough demand to keep up with the amount of waste tires. He added that: (1) Senate Bill 118 was passed to prevent health hazards by providing some regulation of waste tire dumps; (2) It is hoped that these administrative regulations will provide some incentive for people to develop ways to recycle and reuse old tires.

**Petroleum Storage Tank Environmental Assurance Fund Commission**

415 KAR 1:120. Hearings. This administrative regulation was technically amended in the Necessity and Function clause to correct a citation KRS 224.60-130(2)[(c)] to 224.60-130(2)(f).

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.This administrative regulation was amended to include references to KRS 197.070, 197.110, 197.120, and 197.150 pursuant to KRS 13A.220(3)(e) and KRS 13A.222(4)(a).

501 KAR 6:030. Kentucky State Reformatory.This administrative regulation was amended as follows: (1) KSR 08-00-10, to provide copies of Material Data Safety Sheets of hazardous substances to the La Grange Fire Department pursuant to KRS 39.845 and to include references to Public Law 99-499, Title 3 (42 USC Sections 11001-11005, 11021-11023, 11041-11050) pursuant to KRS 13A.220(3)(e) and KRS 13A.222(4)(a); (2) KSR 13-00-02, to include references to KRS Chapter 216B and 314 pursuant to KRS 13A.220(3)(e) and KRS 13A.222(4)(a); (3) KSR 15-00-08, to include reference to KRS Chapter 227 pursuant to KRS 13A.220(3)(e) and KRS 13A.222(4)(a); (4) KSR 19-00-03, to include reference to KRS Chapter 338 pursuant to KRS 13A.220(3)(e) and KRS 13A.222(4)(a).

Cabinet personnel pointed out that the reference to the collection of sales tax in KSR 02-00-01, Page 4, Item 2b, was being deleted because collection of sales tax was dealt with in another place in the policy.

In response to the staff review Cabinet personnel stated that inmates were not considered "employees" for purposes of coverage of KRS Chapter 338 and provided the following cases in support of its position:

(1) Commonwealth of Kentucky, Department of Education, Division of Surplus Properties v. Jerry Ross Smith, 739 S. W. 2d 56 (Ky. 1988) which holds that inmates working outside the confines of a State Penitentiary are not considered employees of the Commonwealth, and therefore, are not entitled to Workers Compensation benefits;

(2) Gilbreath v. Cutter Biological, Inc., 931 F. 2d ___(9th. Cir. 1991) and Williams v. Meece, 926 F. 2d 994 (10th. Cir. 1991) which hold that inmates under the supervision of a State Corrections system are not considered employees for purposes of the Fair Labor Standards Act; and

(3) Sigler v. Lowrie, 404 F. 2d 659 (8th. Cir. 1968); cert den'd 395 U.S. 940 (1969) which holds that there are no federal constitutional rights for inmates to be paid at all for prison labor and compensation is within the discretion of the state.

**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. This administrative regulation was amended as follows: (1) In the heading of the administrative regulation, delete "Office of Learning Programs Development" and insert in lieu thereof "Office of Learning Results Services"; (2) Section 2(1) delete "August 1" and insert in lieu thereof "May 1"; delete "November 1" and insert in lieu thereof "October 1". (3) Section 2(1), after "Deputy Commissioner of Learning" delete "Support" and insert in lieu thereof "Results"; (4) In Section 2(2), after "Bureau of Learning", delete "Support" and insert in lieu thereof "Results".and (5) In Section 2(3), after "Deputy Commissioner of Learning" delete "Support" and insert in lieu thereof "Results".

**Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:070. Attendance. This administrative regulation was amended to comply with the format requirements established in KRS 13A.220(4), relating to the format of subsections, paragraphs and subparagraphs.

**Labor Cabinet: Workers' Compensation Board**

803 KAR 25:011. Procedure for adjustments of claims. Ed Holloway spoke in support of all four of the regulations as a package He said "The regs before you attempt to put in place most of the medical cost containment measures contained in SB 328 that was considered in the last regular session. That bill passed the Senate unanimously and was before the House Labor & Industry Committee, passed unanimously and was one of those left in the final days of the session in the Rules Committee and did not have an opportunity to pass. The provisions required in these regs are designed to control the costs while insuring prompt and efficient medical care to the injured workers in this Commonwealth. The regs specifically restrict the balanced billing by medical providers which apparently continues to exist despite a court injunction. It makes a medical provider more accountable by requiring them to more accurately bill the medical payors. These regs have been the subject of intense scrutiny and debate and, as you know, however controversial as they are, they are crucial if we're ever going to contain the uncontrollable growth in medical cost in this Commonwealth. Our employers simply cannot afford to stay in business if medical costs continue to increase and the national rate making body for Kentucky identified medical costs as the most significant cost driver in our Workers Compensation system. Realistically, the proposed regs don't go far enough. Studies have shown that self-referral by medical providers is a significant factor in the escalation of medical cost. And these regs don't address

that very important issue. Pharmaceutical costs are another significant cost driver in all the medical costs. And these regs don't address that issue. So you can see that these regs aren't comprehensive in dealing with all of the medical cost problems in workers compensation. However, they represent a first step in fulfilling a commitment that the workers compensation has to workers and to employers in this Commonwealth, and that is that this program is intended to protect them, not their peripheral groups that thrive off of this program. I've been informed that those opposing the regs have attacked their statutory authority. I'm sure that you've heard reference to KRS 342.020 and .035 which require the employers to provide medical and which require the board to insure that medical costs are fair and equitable. These sections alone seem to provide ample authority for the board to go much further than they are trying to go in these regulations. However, there are other sections which significantly authorize the board to promulgate any regulation it needs to administer the provisions of the workers' compensation law, and to effectuate its purpose, which is to provide mutual protection to the employees and employers of this Commonwealth, and by insuring employees' prompt benefits while protecting employers from lawsuits. I'm referring specifically to 342.260 and .228. Thank you, Mr. Chairman."

In response to questions from Subcommittee staff, the Workers' Compensation Board proposed that the following amendments be made.

Delete Section 21 related to following certain Kentucky Rules of Civil Procedure regarding frivolous filings as unnecessary.and renumber the remaining sections.

Place the effective date or revision date after each form listed in what is currently Section 23, Subsections (1) and (2), to comply with the requirements of KRS Chapter 13A. On motion and second the amendment passed.

John Stewart, an attorney who has represented injured workers for years suggested several amendments. Mr. Stewart proposed the following: "That upon filing of the employer's first report of injury, a copy of this regulation and a simplified explanation in understandable 'lay terms' shall be immediately delivered by the Workers' Compensation Board to each injured employee with copies of Form 112. ...under section 3 of that section you have proposed 30 days in two instances for filing of the Form 112, I suggest that be stricken and be substituted with 15 days in both instances where 30 appears, that it be changed to 15. The time for the response should be changed from 20 to 10 days, and finally I suggest that you add to section 4, subparagraph (4) ...I would suggest that you add this language to it: 'If the employer or the employer's medical payment obligor has resisted the payment of medical expenses and the administrative law judge does determine that such expense shall be the employer's obligation, the employer shall be obligated to pay the injured employee's reasonable attorney's fees incurred in securing payment of such resisted medical expenses.' Finally, to put a time limit on this, I would suggest that you mandate that in all cases the decision of the administrative law judge shall be rendered within 35 days of the filing of Form 112."

Following discussion of several aspects of the Workers' Compensation System, including the adequate right to counsel, premium rates compared to other states, and the second injury fund, Chairman Kerr asked the agency for a response to Mr. Stewart's comments.

Walter Turner, a member of the Workers' Compensation Board replied that of the 25,000 claims filed per year, most are not disputed and in his (Mr. Turner's) judgement it would be a waste of resources to send that form to all 75,000 people concerning attorney's fees and costs he said. "We already have a fee statute, KRS 314.310, which permits the administrative law judge to assess attorneys fees as cost where proceedings have been instituted for a defendant without reason or grounds".

After a brief discussion of how the Board handles various medical claims, Valerie Salvers, Counsel for the Department, stated that this regulations is a way to provide an expedited procedure and to give a procedure short of filing a formal application for adjustment of claims. She said "This new regulation, which incorporates much that was in the old section in .011, also includes a provision for the filing of a Form 112 after an application for adjustment of claim has been filed, and how it will be routed".

Representative. Allen asked Mr. Turner, what percentage of the workers' claims in this state do people hire an attorney.

Mr. Turner replied that for calendar year 1992, we had about 75,000 first reports of injury. During that same year we had 10,200 litigated claims. In virtually every one of those claims the claimant was represented by an attorney. Additionally, during 1992 we had approximately 2400 medical disputes only, where the dispute had nothing to do with the expected duration of the worker's occupational disability, but addressed itself only to entitlement to medical services, one way or another--either the amount or the utilization of medical services."

The Board, not being agreeable to the proposed changes suggested by Mr. Stewart, the regulations was approved without objection.

**Public Service Commission: Utilities**

807 KAR 5:001. Rules of procedure. At its January 5, 1993 meeting, the Subcommittee agreed to defer this administrative regulation in order to permit agency and Subcommittee staff to consider issues raised by this administrative regulation and to prepare an appropriate amendment.

Objections had been raised to the requirement that regulated entities file copies of their income tax returns, on the grounds that federal law required that income tax returns be confidential. Regulated entities also objected to review by the Commission of transactions between regulated entities and their affiliates that had been approved by a federal regulatory agency with authority over the subject matter of the transactions.

The Commission proposed amendments to: (1) delete the requirement that tax returns be filed in every rate case; (2) permit regulated entities to assert that transactions between them and an affiliate were reasonable because the transactions had been approved by a federal regulatory agency with authority over the subject matter; (3) restore original language, that had inadvertently been omitted, permitting the correction of mathematical errors in a forecast; and (4) exclude dividends per share, or earnings per share, in the comparative income statement.

Victor Fox, Office of the Attorney General (OAG), objected primarily to the amendment that deleted the requirement that taax returns be filed in every rate case. In response to questions from Chairman Kerr, he stated that the OAG would receive the tax returns but felt that the delay in receiving them was unnecessary. Commission personnel stated that the Commission retained its right to require a utility to supply its tax return by a Commission data request.

The Subcommittee approved the amendments proposed by the Commission.

**Kentucky Racing Commission: Thoroughbred Racing**

810 KAR 1:025. Licensing thoroughbred racing. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; 2) KRS 13A.220(4) format requirements; and 3) the fingerprint identification requirement found in Section 5(4) was deleted in its entirety upon request of the Commission.

**Harness Racing**

811 KAR 1:180. Personnel to be licensed; fees. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; 2) KRS 13A.220(4) format requirements; and 3) the fingerprint identification requirement found in Section 1 was deleted in its entirety upon request of the Commission.

**Quarter horse, Appaloosa and Arabian Racing**

811 KAR 2:020. Licensing procedures. This administrative regulation was amended to comply with: 1) KRS 13A.222(4) drafting requirements; 2) KRS 13A.220(4) format requirements; and 3) the

fingerprint identification requirement found in Section 7(4) was deleted in its entirety upon request of the Commission.

**Cabinet for Human Resources: Department for Health Services: Emergency Medical Services**

902 KAR 14:010. Emergency medical services (EMS) personnel funding assistance. This administrative regulation was amended to: (1) Delete superfluous precatory language in Section 1 after the word "Definitions" and before subsection (1), pursuant to KRS 13A.222(4)(a); (2) Insert "urban county government", as a possible applicant in Section 1(2) pursuant to KRS 13A.222(4)(a); (3) Expand the definition of "Volunteer" in Section 1(8) to include paramedics, registered nurses, or physicians, as long as they receive no salary from the ambulance service for making ambulance runs pursuant to KRS 13A.222(4)(a); (4) Require that an application for matching funds include "projected" receipts from the currently approved general fund budget of the applicant; (5) Delete Section 3(1) and (2) in their entirety pursuant to KRS 13A.120 (2)(e) because they repeat KRS 211.954 and KRS 211.956; and (6) Delete Section 4 in its entirety, pursuant to KRS 13A.120(2)(e) because it repeats KRS 211.958.

In response to a comment in the staff review, the Cabinet pointed out that "Actual receipts from the previous fiscal year are shown on the 'Application for Ambulance Service Funding Pursuant to KRS 211.950 to 211.958' (Rev.7/92) which is incorporated in this administrative regulation by reference. Likewise, estimated fees are reported on the 'Application' and are identified as to whether they are included in the general fund budget or are in addition to the general fund receipts."

902 KAR 14:020. Allocation of funding assistance for purchase of ambulance and equipment for emergency medical services (EMS). This administrative regulation was amended to: (1) Delete superfluous precatory language in Section 1, after the word "Definitions" and before subsection (1),, pursuant to KRS 13A.222(4)(a); (2) Insert "urban county government" as a possible applicant in Section 1(3), pursuant to KRS 13A.222(4)(a); (3) Insert the word "administrative" before the word "regulation" in Section 3(3) and Section 4(1); (4) Delete Section 3(4) in its entirety, and move it to Section 5 which relates to funding priorities pursuant to KRS 13A.222(4)(a); (5) In Section 4(2)(a) require that recipients of funds maintain property records for each item purchased pursuant to this administrative regulation; (6) Insert a new Section 5 containing the language previously contained in Section 4; (7) In Section 5(1), require that ambulances with gasoline engines be driven in excess of 70,000 miles before replacement, and ambulances with diesel engines be driven in excess of 100,000 miles before replacement; (8) Insert a new Section 5(4) setting funding priorities for equipment including mobile radios, portable radios, medical anti shock trousers, heavy extrication equipment and base stations; (9) In Section 5(4), require that applicants submit a notarized statement designating the amount of time a base station radio is used for EMS purposes; and (10) Insert a new Section 5(5) which sets a maximum funding level of $20,000 for Type I and Type III ambulances, $15,000 for Type II ambulances and $20,000 for "Remount" ambulances when remounting is done by an "ambulance manufacturer division".

**Department for Social Services: Aging Services**

905 KAR 8:230. Adult day care center certification. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements.

**Department for Medicaid Services: Medicaid Services**

907 KAR 1:450. Nurse aide training criteria and registry. This administrative regulation was amended to: (1) Define "Supervised practical training" in Section 1(6); and (2) Provide that the nurses aide training program consist of no less than seventy-five (75) hours, including a minimum of sixteen (16) hours supervised practical training pursuant to KRS 13A.222(4)(a).

**The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:**

**Personnel Department: Classified**

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

**Board of Pharmacy**

201 KAR 2:210. Patient records and patient counseling.

**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.

**Petroleum Storage Tank Environmental Assurance Fund Commission**

415 KAR 1:050. Definitions.
415 KAR 1:060. Financial responsibility account.
415 KAR 1:070. Petroleum storage tank account.
415 KAR 1:080. Claims procedures.
415 KAR 1:090. Ranking system.
415 KAR 1:100. Third party claims.

Todd Stevens with Hall and Associates, an environmental consulting firm in Versailles, Kentucky, speaking against the regulations addressed the issue of the responses that he received back from his original comments to the regulations at the public hearings regarding the management and disposal of petroleum contaminated soils. "Currently in this state as most of us know there is an enormous volume of petroleum contaminated soils generated. Right now a standard practice for these soils is to be disposed of in a land field. The comments that we made are based upon SB2 Section2 which is now codified as KRS 224.43-010 which states it is the policy of the Commonwealth to reduce the volume of waste disposed of in a landfill. Our comments originally to these regulations were that the tank fund commission is in a position to reduce the volume of that waste going into a landfill by treating these soils vs disposal. There are currently numerous methods out there that are proven that can treat these materials and we are asking that the Tank Fund defer payment to someone who would send this material to a landfill vs treatment, only if a method of treatment was not determined to be feasible. Back to my original comment, we did not ask for a ban on land filling and we did not ask for a particular type of treatment to be used; only that if treatment was feasible in a particular situation that it be utilized.

Dennis Conniff, counsel to the Commission, responded that the agency's interpretation of the statutes creating the commission is that the purpose of the Commission is to provide reimbursement to owners of petroleum storage tanks for corrective action. The responsibility for establishing standards for either treatment or disposal of contaminated soils is delegated specifically to the Natural Resources Commission. We simply did not believe it was appropriate for the Commission to require treatment if disposal in landfills is acceptable under the standards of the Cabinet. Certainly these companies are in a position to compete in the market place and if they can provide a lower cost or equal cost alternative, to provide that to those engaged in corrective action.

Chairman Kerr asked Mr. Stevens if he was saying that the fund should be solely for the services that recycle or clean the soil rather than taking it to landfills. Mr. Stevens said he was not asking for a ban on land filing only if treatment is available at a competitive cost,

it should be utilized vs. disposal.

Chairman Kerr then asked the cost of treatment vs. the cost of removal and disposal, to which Mr. Stevens replied that with most treatment that is occurring being competitive with land filling. He said "landfill costs are going to go up. After 1995 when the next group of landfills close the cost will go up and treatment will be very competitive if not much cheaper. Right now most of the treatment methods that I know of are competitive".

Mr. Stevens concluded by pointing out that using this contaminated soil as cover material at a land fill is not supposed to be allowed and the state should take a position on this through regulations. An extended discussion followed on SB 2, now codified in KRS 224.60-105.

Sam Perkins, a practicing attorney from Lexington, addressed the issue of excessibility to the funds set up in three accounts, the Financial Assurance Account, Small Operators Loan Fund and the Storage Tank Account. He stated the proposed regulations are drafted so that an owner or operator may be eligible for payment from the financial responsibility account only if the owner operator has "maintained compliance. "The standard for eligibility for payment requires absolute compliance with the UST regulations," he emphasized.

On questioning from Chairman Kerr, Mr. Perkins recommended that the modifier "substantial" be inserted before the word "compliance" in 415 KAR 1:060 Section 2(1)(b), in Section 4, and in Section 10.

Morgan Kelly, representing the agency, responded that "substantial" had been in the original act but the statute was amended in 1992. He stated the statute was very specific about certain criteria being taken into consideration.

Chairman Kerr asked "can you deviate from the compliance standards and still participate in this account"? Mr. Kelly indicated that was possible. Chairman Kerr then asked "You are saying that the Commission can allow the claims to be paid even though there is deviation from the standard. Is there some standard the commission looks to in making that decision"? Mr. Kelly responded if at any time the commission determines that an owner/operator has not maintained compliance with the eligibility requirements of this regulation the commission shall notify the owner/operator of a non compliance. (a) if we make a determination that someone fails to meet these conditions that we have established and we have knowledge of it we have a duty to instruct them of that non compliance to give them an opportunity to correct the situation to then be " in compliance". The facility may be deemed ineligible to receive payment from the FRA if in the event of a release if the owner/operator failed to maintain compliance with the eligibility requirement to this administrative regulation. An owner/operator may be determined eligible for payment of cost and corrective action if the action necessary to bring the facility in to compliance are made to the satisfaction of the cabinet. The owner/operator shall not be eligible for payment of the cost for 3rd party liability where release is occurring before the facility is brought back into compliance. Strictly it is a judgment call. That was the provision we had in the past. Case in point. Owner has tanks. Tanks are not registered at the time of the discovery the release. Tanks are registered within 5 days. Owner then brings the facility back into compliance by the mere act of the registration of the tanks. Decision by the Commission. Award money. Pay the claim. This is the level of discretion we have built into these administrative regulations that depending upon the site specific characteristics or issues that may relate to the claim we have the ability to determine true facts and make a determination of eligibility. Irrespective of Sams remarks toward strict compliance and total compliance.

Chairman Kerr responded that he didn't think saying that the owner may be deemed eligible if actions are taken to the satisfaction of the Cabinet was a proper standard. He said "it looks like there is a lot of discretion without any specific guidelines as to when someone is in compliance."

Kathleen Moore, owner of Moore Oil Company also expressed concern about the language of the proposed regulation mentioning "maintained compliance".

Dennis Bailey, a "small service station" owner from Northern, Kentucky spoke next. Mr. Bailey said "I think we need to really look at what we are doing and what we are trying to accomplish. Major oil companies have the deep pockets and all the money. But they are selling the service stations to the small operators and a lot of them need upgrades". He concluded by saying.if "this insurance fund doesn't work for the small business man in KY we are going to have a lot of bankrupt dealers."

Discussion returned to the subjects of "maintained" compliance, compliance to the satisfaction of the Cabinet, and "substantial" compliance, with various viewpoints being expressed.

**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. School council allocation formula.

**Bureau for Learning Results Services**

703 KAR 4:040. Interim methods for verifying successful completion of the primary program.

**Workforce Development Cabinet: Department for Adult and Technical Education: 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.

**Labor Cabinet: Workers' Compensation Board**

803 KAR 25:012. Resolution of medical fee disputes.

**Department of Housing, Buildings and Construction: Plumbing**

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

**Health Services and Facilities**

902 KAR 20:330. Psychiatric residential treatment facilities.

**The Subcommittee had no objections to emergency administrative regulations which had been filed.**

**The following administrative regulations were deferred to the March meeting upon agreement by the promulgating agency and the Subcommittee:**

**Kentucky Higher Education Assistance Authority: KHEAA Grant Program**

11 KAR 5:130. Student application.
11 KAR 5:145. CAP grant award determination procedure.

**Personnel Board**

101 KAR 1:335. Employee actions.

**Board of Registration for Professional Engineers and Land Surveyors.**

201 KAR 18:180. Firm registration.
201 KAR 18:190. Continuing education.

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Standards of Performance**

401 KAR 63:035. Gasoline dispensing facilities, stage II. (This regulation was deferred to the April meeting) This administrative regulation requires gasoline stations to install Stage II vapor recovery systems in designated Ozone Nonattainment areas. The Louisville metropolitan area, the Northern Kentucky metropolitan area and the Ashland Boyd and Greenup County area have been designated moderate ozone nonattainment areas. In the past the U.S. Environmental Protection Agency has taken the position in the past that these Stage II controls are mandatory.

42 USC 7511a(b)(3)(A) requires a 15% reduction in Volatile Organic Compounds (VOCs) by November 15, 1996. To achieve this 15% reduction a number of measures will need to be taken by industrial sources to reduce their emissions. The law is very clear that if this 15% reduction is not achieved, the Stage II requirements will become mandatory.

Secretary Shepherd requested that this administrative regulation be deferred until the April 1993 meeting of the Administrative Regulation Review Subcommittee because of a recent U.S. Court of Appeals decision relating to whether or not Stage II controls should be required by the states.

The case of Natural Resources Defense Council and Center for Auto Safety v. EPA et. al., No. 92-1137 (D. C. Circuit, Jan. 22, 1993) holds that EPA is required to promulgate regulations for automobile "onboard canisters".

42 USC 7521(a)(6) exempts moderate ozone nonattainment areas from Stage II controls when EPA promulgates its "onboard canister" regulation. Pursuant to 42 USC 7521(a)(6), EPA was required to promulgate "onboard canister" regulations by November 15, 1991. EPA refused to promulgate those standards by the November 1991 deadline.

The Natural Resources Defense Council and Center for Auto Safety filed suit to require EPA to promulgate onboard canister regulations. Secretary Shepherd stated that the Cabinet wants to re-evaluate the applicability of its Stage II regulation in light of this court decision.

Representative Bruce asked why the Cabinet was only deferring this administrative regulation for sixty (60) days, when the controls would not go into effect until 1996.

Cabinet personnel stated that there were possibly three reasons for adopting this administrative regulation immediately: (1) 42 USC 7511a(b)(3)(A) requires the states to adopt a Stage II Vapor Recovery administrative regulation by November 15, 1992; (2) This issue "has been clouded" by the court case because of other provisions of the Clean Air Act; (3) The Cabinet is required to submit a plan by November 15, 1993 identifying how the state plans to achieve a 15% reduction in VOCs by November 15, 1996; and (4) If the state determines that it cannot make the 15% reduction, or that it cannot make the 15% reduction without Stage II controls, then the Clean Air Act does mandate that the Stage II controls be in place.

Representative Bruce pointed out that the local gasoline stations will likely come to the General Assembly for help if they are unfairly treated.

In response to a question by subcommittee staff, Cabinet personnel stated that: (1) All nonattainment areas in the state are designated moderate; (2) EPA has listed some areas as marginal nonattainment areas; (3) The Cabinet has requested that these areas be redesignated as attainment.

Senator Smith asked about California's record of emissions reduction, since it has already implemented Stage II controls. The Cabinet stated that: (1) This administrative regulation because the Clean Air Act mandated Stage II controls; (2) California's history with the Stage II vapor recovery system may be relevant when considering the emissions reduction that may be achieved by November 15, 1996; (3) The Cabinet has a computer model designed to illustrate the reduction of emissions that Stage II will give the state if adopted; (4) This computer model has been sent to EPA for analysis within the last couple of weeks; and (5) Once EPA verifies that the model is correct the Cabinet will know how much of the reduction must come from mobile source versus how much must come from stationary sources.

They added that, one of the reasons the Cabinet wants EPA to review the Cabinet's computer model relating to Stage II, is the great cost to the service stations that are required to install these vapor recovery systems. Cabinet personnel believe that Stage II will only provide 1% reduction of VOCs while the service stations will be required to spends several million dollars to implement the Stage II controls.

Secretary Shepherd advised that the Cabinet may have to come back to the Subcommittee in April and request that the Stage II controls be enforced.

Chairman Kerr requested that the Cabinet advise subcommittee staff if it intends to go forward with the Stage II administrative regulation.

**Cabinet for Human Resources: Sanitation**

902 KAR 10:045. Tattoo studio sanitary procedures.

**The Subcommittee adjourned at 3:20 p.m. until March 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.**

## 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 TRANSPORTATION
**Meeting of January 21, 1993**

The Interim Joint Committee on Transportation met on Thursday, January 21, 1993 and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

600 KAR 2:010 - Toll assessment on turnpikes.
601 KAR 1:005 - Safety regulations for motor carriers.
601 KAR 1:025 - Transporting hazardous materials.
601 KAR 11:040 - Medical waivers for intrastate operators.

### INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
**Meeting of January 27, 1993**

The Interim Joint Committee on Health and Welfare met on Wednesday, January 27, 1993, and submits this report.

The Committee voted to approve the following administrative regulations as referred: 201 KAR 2:215, 201 KAR 20:400, 201 KAR 22:135 & E, 202 KAR 1:010, 902 KAR 2:160, 902 KAR 20:320 & E, 904 KAR 2:015, 904 KAR 2:035, 907 KAR 1:102, 907 KAR 1:104, 907 KAR 1:370, 907 KAR 1:382, 907 KAR 1:427, 907 KAR 1:430, 907 KAR 1:474, 907 KAR 1:550, 907 KAR 1:555, and 907 KAR 1:575 & E.

There were no objections.

### INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY
**Meeting of February 2, 1993**

The Interim Joint Committee on Labor and Industry met on Tuesday, February 2, 1993, and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A and had no objections: 803 KAR 25:091.

The Committee adjourned at 3:50 p.m. until the second Tuesday in March, 1993.

### INTERIM JOINT COMMITTEE ON EDUCATION
**Meeting of February 4, 1993**

The Interim Joint Committee on Education met on February 4, 1993, and approved the following administrative regulations:

702 KAR 1:001 - Requires local school districts to develop a local facility plan every four years and submit it to the chief state school officer and State Board of Elementary and Secondary Education for approval.

702 KAR 7:065 - Designates the Kentucky High School Athletic Association as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level.

704 KAR 20:585 - Identifies conditions for initiating revocation proceedings and procedures to be followed during the revocation proceedings.

781 KAR 1:030 - Details agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

781 KAR 1:060 - Establishes criteria for the provisions of services by the work training centers and community facilities.

## CUMULATIVE SUPPLEMENT

**Locator Index - Effective Dates** ..... I2

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** ..... I14

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** ..... I25

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

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| 302 KAR 16:080E | 3130 | 4-7-92 |
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| 804 KAR 9:040E | 3313 | 4-24-92 |
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| 803 KAR 2:320 | | |
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| 804 KAR 9:040 | | |
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# VOLUME 19

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