ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on April 1 and 2, 1993. See **tentative** agenda on pages 2227-2230 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 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
500 KAR 10:020E

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 in order to benefit from a grant which will amount to significant savings to state government by diverting felons from the state prison system. The local boards cannot operate unless they have funds available to be disbursed on a quarterly basis after services have been performed. Currently the regulations require funds to be disbursed on a monthly basis only after an expenditure report has been filed with the department. This will result in long delays in paying staff salaries. This revision will allow the boards to have money on hand to pay expenses as they are incurred. No funds will be disbursed by the boards until services are delivered. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on February 4, 1993, in accordance with KRS Chapter 13A.

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

JUSTICE CABINET
Department of Corrections

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

RELATES TO: KRS 196.710
STATUTORY AUTHORITY: KRS 196.710
EFFECTIVE: February 18, 1993
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 18, 1993 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the Administrative Regulation Review Subcommittee at its March1-2, 1993, meeting unless otherwise noted, and have been referred to a second committee for review.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This **administrative** regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA grants for use in 1993-94 [~~1992-93 and subsequent years and to delete common definitions now being placed in a separate regulation. The provisions of this regulation substantially duplicate 11 KAR 11:020. Therefore, an amendment to this regulation repeals 11 KAR 11:020~~].

Section 1. In order to receive KHEAA grants, the 1993-94 Free Application for Federal Student Aid (FAFSA) [~~1992-1993 Kentucky Financial Aid Form~~], incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided on the FAFSA [~~by the authority~~]. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky , Monday through Friday, 8 a.m. to 4:30 p.m. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award. **An individual who completes and files a FAFSA shall not have applied for a KHEAA grant for an academic year in which he indicates on the application a choice of educational institutions, none of which participate in the KHEAA grant programs; or that he is not a United States citizen, eligible noncitizen, or resident of Kentucky; or that he is a graduate student or will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.**

Section 2. If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4)
STATUTORY AUTHORITY: KRS 164.748(4), HB 468 (1992 RS), Part I, F. 43, p. 47
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This **administrative** regulation prescribes the award determination procedures for the CAP grant program. This amendment is necessary to change a reference from a minimum combined KHEAA grant award to a minimum CAP grant award. [~~The provisions of this regulation substantially duplicate 11 KAR 11:030. Therefore, this regulation contains a repeal of 11 KAR 11:030.~~]

Section 1. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $1,500 [~~$3,000~~] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution shall be the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time.

(2) Except as provided in subsection (3) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution shall be the prevailing tuition charge per semester credit hour at publicly supported community colleges in Kentucky (not in excess of the maximum specified in subsection (1) of this section).

(3) The maximum awards specified in subsections (1) and (2) of this section shall be adjusted by the authority as necessary to conform those maximums to the tuition rate generally charged for attendance at the Commonwealth's publicly supported community colleges, as determined by the Council on Higher Education.

Section 3. Minimum CAP [~~KHEAA~~] Grant. The minimum CAP [~~KHEAA~~] grant awarded to an eligible full-time student shall be the lesser of **the prevailing full-time student tuition charge at publicly supported community colleges in Kentucky** [~~$360 a semester~~] or the amount of eligibility the student has remaining within the aggregate KHEAA grant limit [~~for an academic year shall be $200~~].

Section 4. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 5. In no event shall the KHEAA grant award exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance. The authority shall

reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 6. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 7. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

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

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:100. Postelection and supplemental reports.

RELATES TO: KRS 121.180**(3),** (4), (7)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: KRS 121.180(3)(b) requires candidates, campaign committees, political issues committees, and registered fundraisers to file a report on the 32nd day preceding an election. KRS 121.180(4) and (7) require that candidates, campaign committees, political issues committees, and registered fundraisers shall file postelection reports within thirty (30) days after the election, and supplemental reports until any balance of funds remaining or debts owed show no unexpended balance or unpaid deficit. It is necessary to promulgate this administrative regulation to clarify the manner in which these reports are to be compiled as the transition is made between reporting periods for the primary and regular elections.

Section 1. Definitions. (1) "Thirty (30) day postelection report" means the postelection report required by KRS 121.180(4).

(2) "Supplemental report" means the report required by KRS 121.180(7).

(3) "Thirty-two (32) day preelection report" means the report required by KRS 121.180(3)(b).

Section 2. Postelection Reports. (1) In making the thirty (30) day postelection report required by KRS 121.180(4) following a primary election, the candidate, campaign committee, political issues committee, or registered fundraiser shall reflect only those contributions received, expenditures made, and debts incurred as of 12 midnight local time on the date of the primary election.

(2) All contributions received, expenditures made, and debts incurred subsequent to 12 midnight local time on the date of the primary shall be attributed to the regular election and shall be reflected on the thirty-two (32) day preelection report filed prior to the regular election.

Section 3. Supplemental Reports. **(1)** In making the supplemental reports required by KRS 121.180(7), a candidate, campaign committee, political issues committee, or registered fundraiser shall reflect the remaining balance and debts owing for the primary election only. A successful primary candidate who files one (1) or more supplemental reports for the primary and has carried a remaining balance forward to his campaign account for the regular election, shall reflect on the supplemental report only debts outstanding from the primary election. The supplemental report shall be accompanied by form KREF 92-009 (Certificate of Debt Assumption). The balance carried forward shall be reflected on the thirty-two (32) day preelection report for the regular election.

(2) In making the postregular election supplemental reports required by KRS 121.180(7), a candidate, campaign committee, or political issues committee shall reflect the remaining balance (including funds carried over from the primary and reflected on the thirty-two (32) day preelection report) and debts owing for the regular election only. Supplemental reports shall be filed for the regular election until the debts are paid or assumed and unexpended balance transferred to a future-year candidacy for the same office, issue, or other disposition made.

Section 4. Material Incorporated by Reference. Form KREF 92-009 (Certificate of Debt Assumption), revised 7/10/92, is hereby incorporated by reference and may be obtained free of charge from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. local time.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: December 9, 1992
FILED WITH LRC: January 6, 1993 at noon

PERSONNEL BOARD
(As Amended)

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075, 18A.0751**[**~~, 18A.115~~**]**
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115 relates to promotion of career employees.

Section 1. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of a field employee is that address to which the employee is assigned at the time of appointment to the employee's current position.

Section 2. Demotion. (1) Demotions for cause shall be intra-agency only.

(2) **Voluntary demotion.**

(a) A voluntary demotion shall be made only if an employee

with status requests a voluntary demotion on a written form prescribed by the Department of Personnel.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the demotion;

3. The position from which he requests demotion;

4. The position to which he will be demoted;

5. A statement that the employee waives his right to appeal the demotion.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel. [~~If an employee with status requests in writing that he be demoted, the appointing authority may make a voluntary demotion. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be forwarded to the Commissioner of Personnel.~~]

(3) Voluntary demotions may be interagency or intra-agency.

Section 3. Transfers. (1) An employee with status may be transferred **pursuant to the provisions of this administrative regulation** [~~from one department to another department~~].

(2)(a) Transfers may be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary. [~~Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.~~]

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall state the:

1. Employee has been selected for transfer;

2. New work station;

3. Reason for the transfer;

4. Employee is required to report to the new work station;

5. Effective date of the transfer; and

6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Commissioner of Personnel.

(d) An employee shall report to the new work station upon the date specified in the notice. [~~If the transfer is on an involuntary basis, the employee shall receive notice of his transfer prior to the effective date of transfer. Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the transfer and the employee's selection for transfer, and the employee's obligation to report to the new work station. The notice shall also advise the employee that he has the right to appeal the transfer to the board within sixty (60) [thirty (30)] days of receipt of the notice, excluding the day that he received notification. When the employee is notified, copies of the notice shall be forwarded to the Commissioner of Personnel.~~]

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee is entitled to travel and moving expenses as provided by administrative regulations promulgated by the Finance and Administration Cabinet;

(b) An employee shall receive the notice of involuntary transfer established in subsection (3)(a) and (b) of this section at least thirty (30) days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

a. Reimbursement of travel expenses incurred within thirty (30) days of the effective date of the notice; and

b. Moving expenses, if any. [~~If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer, in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's moving expenses, if any, in accordance with the Finance and Administration Cabinet's Policy Procedure relating to Moving Expenses and Reimbursement. The notice specified in subsection (3) of this section shall advise the employee of these provisions.~~]

(5) Involuntary transfers shall be intra-agency only.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on a written form prescribed by the Department of Personnel.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the transfer;

3. The position, including identifying number, from which he requests a transfer;

4. The position, including identifying number, to which he requests a transfer; and

5. A statement that the employee waives his right to appeal the transfer.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel. [~~If an employee with status requests in writing that he be transferred, the appointing authority may make a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of Personnel.~~]

(7) Voluntary transfers may be interagency or intra-agency.

Section 4. (1) A request for reinstatement may be approved if it has been:

(a) Made at the request of the appointing authority; and

(b) Approved by the Commissioner of Personnel.

(2) If a request is for reinstatement to the candidate's former job classification, it shall be approved if the candidate meets the current qualifications for the former job classification.

(3) Prior to reinstatement, a candidate for reinstatement shall pass the examination for a job classification if the:

(a) Request is for reinstatement to a job classification that is different than the candidate's previous job classification; and

(b) Candidate has not previously had status in the job classification. [~~Reinstatement. Reinstatement may be made upon request of the appointing authority and with the prior approval of the Commissioner of Personnel. Approval shall include a finding that the candidate for reinstatement meets the current qualifications for the former job classification. If the reinstatement is to a different job classification, the candidate shall pass the appropriate examination prior to reinstatement unless the employee has previously had status in that job classification.~~]

JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: November 13, 1992

FILED WITH LRC: November 18, 1992 at 9 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(As Amended)

201 KAR 16:010. Code of ethical conduct.

RELATES TO: KRS 321.351(1)(h) [~~321.350(6), (7)~~]
STATUTORY AUTHORITY: KRS 321.235 [~~321.240~~]
NECESSITY AND FUNCTION: KRS 321.351 [~~321.350(6) provides that the board may suspend or revoke a certificate of license for any gross negligence, incompetence or misconduct in the practice of veterinary medicine in this Commonwealth. KRS 321.350(7)~~] provides for the suspension or revocation of a certificate of license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain acts or inaction which shall constitute [~~gross negligence or misconduct in the practice of veterinary medicine and likewise sets forth~~] a code of ethical conduct for each licensed practitioner.

Section 1. A [~~The failure on the part of any~~] veterinarian shall [~~to~~] take sufficient [~~the~~] time and conduct the appropriate tests necessary [~~to attempt~~] to diagnose the condition of the patient [~~animal~~] which he is **treating** [~~attempting to treat~~] [~~shall constitute gross negligence, incompetence and misconduct~~].

Section 2. A veterinarian shall bill accurately and truthfully for services rendered. [~~The continued failure of a veterinarian to treat the animal which he has undertaken to treat in a manner that a qualified veterinarian would use under the same or similar circumstance shall constitute gross negligence, incompetence and misconduct.~~]

Section 3. [~~The failure of~~] A veterinarian shall [~~to~~] maintain adequate equipment to treat patients [~~animals~~] that he is called upon to treat in the practice of veterinary medicine [~~shall constitute gross negligence, incompetence and misconduct in the practice of veterinary medicine~~].

Section 4. A veterinarian shall [~~at all times~~] maintain his service premises and all equipment thereon in a clean and sanitary condition. [~~All veterinary offices and clinics, including instruments and equipment contained therein, shall at all times be kept clean and free from any condition or surroundings that will make or tend to make said instruments and equipment unsanitary or unhygienic.~~]

Section 5. A veterinarian shall not issue a certificate of health unless he has personal knowledge through actual examination and appropriate testing of the animal that the animal meets the requirements for the issuance of the certificate. [~~Any veterinarian who misrepresents or misstates information on a health certificate or any other document relating to the sale, movement or transportation of animals, or who presigns health certificates or other related documents in order that they may be used by some other person or persons, is guilty of misconduct in the practice of veterinary medicine.~~]

Section 6. A veterinarian shall not [~~in any way~~] aid or abet the unlawful practice of veterinary medicine. [~~No veterinarian shall permit, encourage or aid any person or corporation to engage in the unauthorized and illegal practice of veterinary medicine.~~]

Section 7. (1) A veterinarian shall not [~~be guilty of misconduct if he~~] sell[s], or offer[s] for sale, **prescription** medicine or [~~and~~] drugs at any place other than:

(a) His office, clinic, **or** [~~or~~] hospital; or
(b) Other [~~at the~~] place where he is treating patients.

(2) [~~animals~~] [~~and~~] The **prescription** drugs or [~~s and~~] medicines **sold, or offered for sale,** shall [~~s will~~] be used in the treatment of **the** [~~said~~] patient **the veterinarian is treating.**

(3) A veterinarian may fill the prescription of another licensed veterinarian who has established a bona fide veterinarian-client-patient relationship in **a** [~~that~~] case [~~animal~~].

Section 8. A veterinarian shall not engage in false, misleading, or deceptive advertising. [~~may advertise by any medium.~~
~~(1) Advertisements shall not be false, misleading or fraudulent.~~
~~(2) Any representation that the veterinarian is a board certified specialist in any speciality of veterinary medicine unless that veterinarian has been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners and has furnished proof of such certification to the board, is prohibited.~~]

Section 9. A veterinarian shall not [~~It shall be improper for veterinarians to~~] write testimonials as to the virtue of drugs, medicines, remedies, or foods except to report the results of properly controlled experiments or clinical studies to interested veterinary organizations and associations.

Section 10. A [~~Every~~] veterinarian [~~engaging in the practice of veterinary medicine, veterinary surgery, and veterinary dentistry in this state~~] shall keep adequate and sufficient records of the examination and treatment of all patients [~~animals~~] [~~examined and treated~~] [~~so as to afford information relative to these matters to those persons entitled to see such information~~].

Section 11. A veterinarian shall not represent to the public that he is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has:

(1) Been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners; and

(2) [~~Has~~] furnished proof of such certification to the board.

Section 12. (1) A veterinarian shall not overutilize his practice. [~~Overutilization of practice is practice which is excessive in quality or amount to the needs of the patient. Overutilization may be determined from such sources as the patient's history, subjective symptoms, objective findings, reasonable clinical judgment, or other relevant information.~~]

(2) A practice shall be deemed overutilized if it is excessive in quality or amount relevant to the needs of the patient.

(3) Whether a practice is overutilized shall be determined by considering:

(a) The patient's history and subjective symptoms;
(b) Objective findings;
(c) Reasonable clinical judgment; and
(d) Other information relevant to the practice of veterinary medicine.

Section 13. A veterinarian shall promptly notify the board of:

(1) [~~any~~] Disciplinary action taken against him; or

(2) The voluntary surrender of his license to practice veterinary medicine in another jurisdiction; **and**

(3) the conviction, in any jurisidiction, of a:
(a) Misdemeanor; or
(b) Felony. [~~He shall also notify the board of any conviction of a misdemeanor or felony in any jurisdiction.~~]

Section 14. A veterinarian's practice shall conform to the currently accepted standards in the profession of veterinary medicine.

Section 15. A veterinarian shall not engage in any fraud, deceit,

or misrepresentation in the procurement of a license to practice veterinary medicine.

Section 16. A veterinarian shall not practice veterinary medicine:
(1) So as to endanger the health and welfare of his patients or the public; or
(2) [. A veterinarian shall not practice veterinary medicine] If his ability to practice with reasonable skill and safety is adversely affected by reason of [illness,] excessive use of:
(a) Alcohol;
(b) Drugs;
(c) Narcotics;
(d) Chemicals; or
(e) [any] Other substances.

Section 17. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine.

Section 18. A veterinarian shall [at all times] conduct professional activities in conformity with all federal, state, and municipal laws, ordinances or regulations.

Section 19. A veterinarian shall comply with **a** [any] request by the board to appear before the board or to provide information to the board.

Section 20. A veterinarian shall comply with [any] restrictions on his practice of veterinary medicine imposed by the board with the licensee's consent or after notice and hearing.

Section 21. A veterinarian shall notify the board of the suspension, revocation, or voluntary surrender of his federal Drug Enforcement Administration registration or his state controlled substances license.

Section 22. (1) A veterinarian shall not **abuse or take advantage of the confidence reposed in him by his client.**
(2) A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his client have differing interests if the:
(a) Client reasonably expects the veterinarian to exercise his professional judgment for the protection of the client;
(b) Veterinarian has not fully disclosed his interest; and
(c) Client has not consented after full disclosure.
(3) Acceptance of a fee from both the buyer and the seller in a transaction shall constitute prima facie evidence of a conflicct of interest.
(4) Acceptance of a fee from a buyer and a seller in an inspection of an aminal for soundness shall constitute a conflict of interest. [represent conflicting interests except by the express consent of all the parties after full disclosure of all the facts. A conflict of interest shall include, but not be limited to, accepting a fee from a buyer to inspect an animal for soundness and accepting a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.]

Section 23. A veterinarian shall not prescribe, dispense or administer controlled substances except in the course of his professional practice and when a bona fide veterinarian-client-patient relationship has been established.

Section 24. A veterinarian shall maintain a confidential relationship with his clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 25. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

Section 26. A veterinarian shall not physically abuse or engage in unnecessary rough handling of a patient under his care.

[Section 27. A veterinarian shall not delegate to a veterinary technologist, technician, or an assistant who is not licensed as a veterinarian any aspect of the practice of veterinary medicine as defined in KRS 321.181(5), except as provided by KRS 321.443(1), without direct supervision by the veterinarian.]

Section **27.** [28.] A veterinarian shall not permit a veterinary technologist, technician, or assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section **28.** [29.] A veterinarian shall not refuse treatment of a **patient** [n animal] on the basis of the client's race, color, sex, religion, national origin, or disability.

Section **29.** [30.] **(1) If treatment is initiated, it shall be completed unless terminated by the client.**
(2) A veterinarian shall have the right to refuse to:
(a) Admit as an inpatient to his hospital or clinic an animal that is not currently vaccinated; or
(b) Render veterinary medical services for an owner who physically or verbally abuses the veterinarian or his employee. [A veterinarian may refuse to provide treatment to an animal for reasons other than those listed in Section 29 of this administrative regulation, but if such treatment is initiated, it shall be completed unless terminated by the client. A veterinarian shall have the right to refuse to admit as an inpatient to his hospital or clinic any animal that is not currently vaccinated, or to render veterinary medical services for any owner who uses physical or verbal abuse towards the veterinarian or towards any employee of the veterinarian.]

Section **30.** [31.] A veterinarian may refuse to return a **patient** [n animal] to its owner on the grounds that the owner has failed to fully pay for veterinary medical services rendered, or boarding services rendered. A veterinarian shall make every effort to accommodate the economic situation of the client by any alternative means available.

Section **31.** [32.] A veterinarian shall not neglect a patient under his care.

Section **32.** [33.] A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner is away, except as otherwise provided by law.

Section **33.** [34.] A veterinarian shall obtain the consent of the owner before disposing of any patient which dies while in the veterinarian's care, provided such consent is given within a reasonable time. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section **34.** [35.] A veterinarian shall obtain the consent of the patient's owner or agent before administering general anesthesia or performing any surgical procedure, unless circumstances qualifying as an emergency do not permit obtaining such consent.

Section **35.** [36.] A veterinarian shall post at his facility and make available over the telephone his policy regarding the hours, emergency coverage, and other similar provisions for the operation of his facility.

Section **36.** [37.] A veterinarian shall ascertain, before hiring, whether a potential veterinarian employee has a valid, current

Kentucky license to practice veterinary medicine and shall be responsible for ascertaining whether the license to practice veterinary medicine of any veterinarian employee is current.

Section 37. [~~38.~~] A veterinarian shall obtain the consent of a patient's owner or agent before transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent.

[~~Section 39. A veterinarian shall not engage in any conduct which reflects unfavorably on the profession of veterinary medicine.~~]

JOHN McCLURE, Board Vice Chairman
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(As Amended)

201 KAR 21:095. Licensure and registration of persons performing peer review.

RELATES TO: KRS 312.200(3)
STATUTORY AUTHORITY: KRS 312.019(9)
NECESSITY AND FUNCTION: KRS 312.019(9) authorizes the board to adopt administrative regulations. KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration and registration fee for persons to perform those review services.

Section 1. Definitions. (1) The definition of "peer review" is governed by KRS 312.015(4).

(2) "Accepted standards" means those standards of care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(3) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

(4) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges for those services. In determining the reasonableness of cost, factors to be considered would include the usual and customary charges by chiropractors for the same or similar services in the locality where the services were performed.

(5) "Bill for treatment" means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.

(6) "Patient" means an individual who receives treatment from a chiropractor.

(7) "Properly utilized services" means appropriate treatment, services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

Section 2. Requirements for Licensure and Registration. Persons performing chiropractic peer review shall:

(1) Hold a current license to practice chiropractic within the Commonwealth of Kentucky; and

(2) For the first year that a person seeks to register to perform peer review, he shall have previously successfully completed a minimum of sixty (60) hours of utilization review in independent medical examination from a **chiropractic college accredited by the Council on Chiropractic Education** [~~CCE accredited chiropractic college~~]; and for each year thereafter that a person seeks to register to perform peer review, he shall have completed six (6) hours of utilization review offered by a **chiropractic college accredited by the Council on Chiropractic Education** [~~CCE accredited chiropractic college~~]; and

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements set out in this section and of having met the education requirements of KRS 312.175; and

(b) Paying a registration fee of twenty (20) dollars.

DR. HAROLD BYERS, President
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(As Amended)

201 KAR 27:008. Licensing requirements and fees.

RELATES TO: KRS 229.021, 229.081, 229.171
STATUTORY AUTHORITY: KRS 229.180
NECESSITY AND FUNCTION: To establish licensure requirements and fees for participants and for professional matches to be held in the Commonwealth.

Section 1. Annual License for Participants. All persons participating as in a professional match shall be licensed by this commission. All licenses shall expire on December 31 of the year in which they are issued. The license fee for each partici- pant shall be as follows:

(1) Wrestlers and referees of professional wrestling matches - ten (10) dollars;

(2) Boxers and kick boxers - ten (10) dollars;

(3) Judges - ten (10) dollars;

(4) Managers - ten (10) dollars;

(5) Referees of boxing, elimination, and kick boxing - ten (10) dollars; or

(6) Timekeepers - ten (10) dollars.

Section 2. Licenses for Elimination Events. The fee for a contestant to participate in an elimination event shall be four (4) dollars and shall be valid for the duration of that event only or a maximum of three (3) calendar days from the date of issuance.

Section 3. Annual License for Professional Matches. [~~(1)~~] The annual license for professional matches shall entitle the holder to conduct wrestling, boxing, elimination, or kick boxing events at any location within the Commonwealth for a period of one (1) year from the date of issuance. The fee for the annual license for professional matches shall be $300.

[~~(2) Before an annual license is granted, the applicant shall file with the commission a bond in the sum of $5,000, to be approved as to form and sufficiency by the commission, conditioned for the payment of compensation to participants or taxes due and payable to the commission pursuant to KRS 229.031.~~]

TODD J. NEAL, Chairman
APPROVED BY AGENCY: January 12, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

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

301 KAR 2:048. Harvest seasons for upland game birds, furbearers and small game on specified wildlife management areas and refuges.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: This administrative regulation pertains to the hunting seasons, bag and possession limits for upland game birds, furbearers and animals on specified wildlife management areas and refuges. This administrative regulation is necessary for the continued protection of these species and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply. This administrative regulation includes the substance from 301 KAR 2:047 and repeals 301 KAR 2:047 in its entirety.

Section 1. All provisions of 301 KAR 2:250 shall apply to wildlife management areas and refuges unless specifically exempted pursuant to Section 3 of this administrative regulation.

Section 2. Any person, except waterfowl hunters, using a wildlife management area during periods when firearms are allowed for deer hunting shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment. Camouflage pattern hunter orange garments do not meet these requirements.

Section 3. Exceptions to 301 KAR 2:250 for Wildlife Management Areas and Refuges. (1) Ballard Wildlife Management Area located in Ballard County. Areas designated by signs are closed to hunting.

(2) Barren River Wildlife Management Area in Allen and Barren Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(3) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties, Mill Creek Wildlife Management Area in Jackson County and Cane Creek Wildlife Management Area in Laurel County and all private inholdings within these areas:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: December 5 through December 31. All trappers shall obtain and complete a harvest survey form obtained from the area manager.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(f) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(g) Shakeout season is closed on these areas.

(4) Big South Fork National River and Recreation Area located in McCreary County:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(5) Central Kentucky Wildlife Management Area located in Madison County:

(a) This area is closed to all upland game bird and small game hunting except squirrel.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials. In addition, unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays and Sundays, and during permitted field trials.

(c) All trappers shall obtain prior written permission from the area manager.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area located in Nicholas County:

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area located in Grant and Kenton Counties:

(a) Areas closed to hunting are designated by refuge signs.

(b) Quail and rabbit: the tenth day after the second Saturday in November through January 31.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area located in Daviess County:

(a) Area closed to hunting and trapping for upland game birds, small game and furbearers.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(9) Dewey Lake Wildlife Management Area in Floyd County, Paintsville Lake Wildlife Management Area in Johnson and Morgan Counties, Fishtrap Lake Wildlife Management Area in Pike County and Redbird Wildlife Management Area in Clay and Leslie Counties:

(a) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: the tenth day after the second Saturday in November through December 31.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(f) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(g) Shakeout season is closed on these areas.

(10) Fleming Wildlife Management Area located in Fleming

County:

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(11) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There shall be no hunting on Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 21-22 and 28-29. There shall be no hunting on December 25 and January 1.

(a) Seasons, bag and possession limits:

1. Squirrel (gray and fox): third Saturday in August through the last day in January.

2. Quail: Thanksgiving day through the last day of February.

3. Rabbit: Thanksgiving day through the last day of February; bag limit five (5); possession limit ten (10).

4. Raccoon, foxes and opossum: taking with gun or dogs, Thanksgiving day through the last day of January; limit one (1) per person.

5. Coyote and groundhog: May 13 through August 17 and during any other authorized hunt.

(b) Permission shall be obtained for each hunt at building #6645 and hunters shall stay within their assigned area. Hunters shall obtain a hunting permit costing fifteen (15) dollars.

(c) All hunters between the ages of twelve (12) and eighteen (18) shall possess their own hunter safety certificate.

(12) Fort Knox Wildlife Management Area located in Bullitt, Meade and Hardin Counties:

(a) Furbearer: trapping is prohibited.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(c) Ruffed grouse hunting is open the month of December with a one (1) bird bag limit. All birds must be checked at building #112.

(d) Area requirements.

(1) Permission to hunt shall be obtained for each hunt at the Hunt Control Office.

(2) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(3) Hunters shall stay in their assigned areas.

(4) All hunters thirty-seven (37) years of age and younger shall possess their own hunter safety certificate.

(5) Pistols, centerfire rifles and crossbows are prohibited.

(6) Vehicles are prohibited off maintained roads, except as otherwise authorized.

(7) All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.

(13) Grayson Lake Wildlife Management Area in Carter and Elliott Counties:

(a) Areas designated by signs are closed to hunting.

(b) Quail and rabbit: November 1 through December 31.

(c) Grouse: October 1 through December 31.

(d) Squirrel (gray and fox): Saturday preceding Labor Day through December 31.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(g) All hunters and dog trainers shall check in and out daily at a designated check station.

(14) Green River Lake Wildlife Management Area in Taylor and Adair Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) Grouse: Closed to hunting.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(15) Higginson-Henry Wildlife Management Area located in Union County:

(a) Quail and rabbit: November 1 through January 31

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(c) All hunters and dog trainers shall check in and out daily at the designated check station.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(16) Kleber Wildlife Management Area located in Owen and Franklin Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(17) Lake Cumberland Wildlife Management Area - all Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland:

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: November 1 through December 31.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(18) Land Between the Lakes Wildlife Management Area (LBL) located in Trigg and Lyon Counties. Areas open to hunting for the following species are located north of the state line to Barkley Canal, except that hunting is prohibited in developed public use areas, safety zones and posted areas unless otherwise noted.

(a) Squirrel (gray and fox): from the third Saturday in August through the fourth Friday in September, December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(b) Quail and rabbit: December 1 through the last day of February.

(c) Raccoon and Opossum: Tuesday, Thursday, Friday and Saturday nights only during the period December 1 through January 31. Daily bag limit one (1) per person per night. Raccoon and opossum hunters shall check in and out nightly at designated check station. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt. Season shall be closed in some hunt areas as posted at designated hunter check stations.

(d) Field trials: September 1 through March 31. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed trial date. Approval shall be obtained from LBL and the Department of Fish and Wildlife Resources First District Captain. Field trials shall be recognized club trials and each participant shall be on a club roster for that trial.

(e) Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September south of Highway 68 to state line.

(f) Fox (gray and red) and bobcat taking: gun and archery on December 1 through January 31.

(g) Groundhog: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(h) Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(i) Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(j) All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting from the fourth Saturday in September through November 30, except in authorized field trials and designated dog training hunt areas.

(k) Trapping for furbearers (including bobcats):

1. No person shall trap furbearers on LBL without a trapping permit. Permits shall be issued by public drawing, with unissued permits made available on a first-come first-served basis.

2. Authorized trappers shall trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: fourteen consecutive days beginning the second Monday in January for all furbearers.

4. Trapping devices: No. 3 or smaller foot-hold traps, padded foot-hold traps and snares without self-locking devices are permitted. The jaws of No. 1 1/2 and larger foot-hold traps used on land shall be offset three-sixteenths (3/16) inch or be padded foot-hold traps. Water sets are restricted to No. 3 or smaller foot-hold traps, padded foot-hold traps, No. 330 or smaller conibear-type traps, and nonlocking snares.

(l) Bobcat: bobcats may be taken only by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any legal method.

2. The bobcat harvest quota is twenty-four (24). Should it be determined that the quota of twenty-four (24) bobcats will be filled prior to January 31, the season shall close. A minimum of twenty-four (24) hours notice of the time and date of closure shall be given.

3. All bobcats shall be tagged before leaving LBL and within forty-eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(m) Weapons restrictions: the use of crossbows, center-fire rifles, center-fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection except that groundhogs may be taken with center-fire rifles during the specified spring season.

(n) Crow: December 1 through the last day of February.

(19) Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties:

(a) Quail and rabbit: November 1 through January 31.

(b) Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(20) Peal Wildlife Management Area located in Ballard and Carlisle Counties:

(a) Squirrel (gray and fox): third Saturday in August through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through December 31.

(b) Furbearer: hunting: twenty (20) day taking season commencing the tenth day after the second Saturday in November. Shakeout season is closed on this area.

(c) Furbearer: trapping: December 1 through 10; water sets only; trappers selected by drawing conducted by the area manager.

(d) Quail and rabbit: November 1 through January 31.

(e) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(f) Unleashed dogs are prohibited April 1 until the third Saturday in August except during permitted field trials.

(21) Pennyrile Forest Wildlife Management Area located in Christian, Caldwell and Hopkins Counties and Tradewater Wildlife Management Area located in Christian and Hopkins Counties: upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(22) Pine Mountain Wildlife Management Area located in Letcher County. Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(23) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties.

(a) Hunters on this area shall use pioneer weapons. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows, recurve bows or compound bows and crossbows.

(b) Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(d) Breech-loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.

(24) Reelfoot National Wildlife Refuge located in Fulton County:

(a) Squirrel (gray and fox): **August 28 through September 30** ~~[fourth Saturday in August through October 15]~~ only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the **third** ~~[last]~~ Wednesday in **October** ~~[September]~~ and four (4) consecutive nights beginning on the **last** ~~[first]~~ Wednesday in October on the Long Point refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.

(25) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all hunting.

(26) Sloughs Wildlife Management Area located in Henderson and Union Counties. Frank Sauerheber Unit: areas designated by signs are closed to public access from October 15 through March 15.

(27) Taylorsville Lake Wildlife Management Area in Spencer, Anderson and Nelson Counties:

(a) East of Van Buren Boat Ramp: areas closed to public access the day after the deer quota hunt through March 15 are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31.

(c) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(d) All hunters and dog trainers shall check in and out daily at a designated check station.

(28) West Kentucky Wildlife Management Area located in McCracken County:

(a) Quail and rabbit: November 1 through January 31 on Tracts 2, 3, 6 and 7; January 1 through 10 or January 1 until maximum acceptable harvest levels have been reached as determined from hunter use data on Tracts 1, 4 and 5. Signs announcing closure will be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(b) Squirrel (gray and fox): from the third Saturday in August through December 31 on Tracts 1 through 7.

(c) Raccoon and Opossum: Tracts 1 through 7. Shakeout season is closed on this area.

(d) All hunters and dog trainers shall check in and out daily at the

designated check station.

(e) Hunting is prohibited on all tracts designated by numbers followed by the letter "A".

(f) Rifles or ball or slug ammunition of any type for taking small game is prohibited.

(g) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(h) Vehicular traffic on Tract 6 is prohibited February 1 through April 16.

(i) Upland game bird, small game or furbearer hunting, trapping or unleashed dogs are prohibited during periods when breech-loading firearms are allowed for deer hunting.

(29) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.

(30) Yatesville Wildlife Management Area located in Lawrence County:

(a) All hunters and dog trainers shall check in and out daily at a designated check station.

(b) Areas designated by signs are closed to all public access.

(31) Yellowbank Wildlife Management Area located in Breckinridge County:

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 until the third Saturday in August, except during permitted field trials.

(d) Upland game bird, small game or furbearer hunting or trapping or unleashed dogs are prohibited during periods when breech-loading firearms are permitted for deer hunting.

(e) Areas within Tract 1 designated by signs are closed to public access from October 15 through March 15.

Section 4. 301 KAR 2:047, Seasons, limits for upland game birds, furbearers and small game on specified wildlife management areas and refuges, is hereby repealed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

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

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, [~~150.025, 150.092,~~] 150.170, 150.175, [~~150.180, 150.300, 150.305,~~] 150.340, 150.360, [~~150.365,~~] 150.370, 150.390, 150.399, 150.400, 150.410, [~~150.415, 150.416, 150.417,~~] 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175 [~~150.025~~]

NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds, furbearers and small game and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply.

Section 1. Definitions. (1) "Trap" means deadfall, wire cage or box trap, foothold trap, padded foothold trap, Conibear-type trap or nonlocking snare.

(2) "Foothold trap" means a spring-loaded trap with smooth, metallic jaws designed to capture an animal by closing upon one of its feet.

(3) "Padded foothold trap" means a spring-loaded trap with offset jaws designed to capture an animal by closing upon one of its feet and which is commercially constructed so the edges designed to touch the animal are composed of a nonmetallic substance.

(4) "Conibear-type trap" means a spring-loaded trap with opposing jaws designed to capture an animal around the neck or body and quickly render that animal unconscious or dead.

(5) "Nonlocking snare" means a wire, cable or string which forms a loop to capture an animal and which is constructed without a device to prevent the loop from loosening.

(6) "Furbearer" means mink, muskrat, beaver, opossum, gray fox, red fox, raccoon, weasel, striped skunk and bobcat.

Section 2. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): [~~Eastern zone - Saturday preceding Labor Day through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through December 31. The Eastern zone includes the following counties: Bell, Breathitt, Clay, Clinton, Elliott, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, and Whitley. Western zone -~~] third Saturday in August through October 31, and the tenth day after the second Saturday in November through December 31. [~~The Western zone includes all counties not in the Eastern zone.~~]

(2) Rabbits and quail: Zone A - November 1 through the Friday before the second Saturday in November and the tenth day after the second Saturday in November through January 31. Zone A includes the following counties: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Estill, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

Zone B - the tenth day after the second Saturday in November through the third Sunday in February. Zone B includes all counties not listed in Zone A above.

(3) Grouse: the tenth day after the second Saturday in November through the last day in February. Grouse hunting is permitted in the following counties: Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

(4) Furbearers: the tenth day after the second Saturday in November through January 31. Bobcats shall be taken only according to provisions of 301 KAR 2:240.

(5) Extended beaver season: the entire month of February.

(6) Falconry hunting: squirrels, rabbits, quail, ruffed grouse and furbearers may be taken by falconry from September 1 through February 15.

(7) Red and gray fox and rabbits by persons hunting during daylight hours with dogs for sport and not to kill, year round open season. [~~For persons who hunt red and gray fox and rabbits during daylight hours with dogs for sport and not to kill, year round open season.~~]

Section 3. Legal Trapping Devices and Hunting Restrictions. (1) Traps. All traps set on dry land shall be [~~are limited to~~] deadfalls, wire

cage or box traps, No. 2 or smaller foothold traps, padded foothold traps having a jaw spread of six (6) inches or less, No. 220 or smaller Conibear-type traps or [and] snares without self-locking devices. Traps shall not be set closer than ten (10) feet apart and shall not be set in trails or paths commonly used by humans or domestic animals. All traps are legal for water sets except during the extended beaver season as stipulated in subsection (2) of this section.

(2) Extended beaver season: traps permitted [restrictions]. Traps of size No. 3 and larger, padded foothold traps having a jaw spread of five and one-half (5 1/2) inches or larger, Conibear-type traps, with jaw spread eight (8) inches or larger and nonlocking snares. Only water sets are permitted.

(3) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices.

(4) Taking raccoon and opossum. Raccoon and opossum shall not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(5) Prohibited ammunition. No person hunting any species listed in this regulation shall have in his or her possession any buckshot or shotgun slugs.

(6) Shooting hours. Daylight hours only, except for raccoon and opossum which may be taken any time during day or night.

Section 4. Bag and Possession Limits.

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail	8	16
Grouse	4	8
Furbearers (except raccoon by means other than trapping)	No limits	No limits
Raccoon (by means other than trapping)	1	No limits*
Falconry	During portions of this season which occur outside of seasons specified in Section 3(1), (2), (3) and (4) of this regulation, the daily falconry bag limit shall not exceed two (2) of any of these species, singly or in the aggregate, per falconer.	

*No possession limit on raccoons, except that no hunter shall take more than the daily bag limit within a twenty-four (24) hour period from noon to noon.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: December 8, 1992
FILED WITH LRC: January 14, 1993 at 1 p.m.

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

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS [150.010, 150.021,] 150.022[, 150.023]
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.022 [150.025]
NECESSITY AND FUNCTION: KRS 150.022 stipulates that the Commissioner of the Department of Fish and Wildlife Resources shall call a meeting of sportsmen in each wildlife district to select five (5) names for submission to the governor for appointment to the Fish and Wildlife Resources Commission. This regulation is necessary to assure that these meetings are conducted in a fair and consistent manner in each district. The function of this regulation is to establish the method by which this selection process is to be carried out and to provide for a process by which grievances may be resolved.

Section 1. Scheduling of Meetings and Notification of the Public. (1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the wildlife district that is centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he deems necessary to insure the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. However, should a change of location be called as provided for in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. He may also delay the beginning of the meeting for any other reason he deems necessary, but under no circumstances may he convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public at 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time and place of the meeting. He shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, he shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall [will] serve as chairman of the meeting, and this chairman shall be the final arbiter of any disputes or procedural questions which may arise during the course of the meeting.

(2) After calling the meeting to order, the chairman shall explain the purpose of the meeting and the rules under which it will be conducted.

(3) The chairman shall [will] then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district [and registered political affiliation. The information contained in this affidavit shall be considered binding until an appointment is made by the governor and may not be changed by a nominee or by any other person].

(5) The chairman shall not close the nominations until he has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) Should no more than five (5) names be placed in nomination, the chairman shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) Should more than five (5) names be placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The chairman shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The chairman shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his legal right to participate in the selection process as stipulated in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and then all shall swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his choice on the ballot provided. Ballot boxes, **overseen** [~~manned~~] by personnel of the department, will be available at designated exits. Each eligible participant shall hand the department employee his signed affidavit, then (and only then) shall [~~will~~] he be allowed to place his ballot in the ballot box.

(6) After depositing his ballot, each participant shall immediately leave the meeting room and shall [~~may~~] not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the chairman or his designee(s).

(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.

(9) Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The chairman shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place,the chairman shall settle the issue by the toss of a coin. Tie votes which do not affect the outcome of the selection of the five (5) names will not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the chairman, whose decision shall be binding unless subsequently overturned by the commission or the courts as stipulated below.

(3) Any individual who is aggrieved by a decision of the chairman or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission within ten (10) calendar days after the meeting.

(4) The commission shall, within fifteen (15) working days after the receipt of a written appeal, call a special open meeting to hear testimony on the appeal and decide the matter.

(5) Decisions of the commission may be appealed within ten (10) calendar days to the Franklin Circuit Court. However, the decision of the commission shall stand unless **overturned in court** [~~it is proved that the decision was procured or made by fraud, duress, malfeasance or illegal means~~].

Section 5. Submission of the List of Nominees to the Governor. (1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: January 14, 1993

FILED WITH LRC: January 15, 1993 at 9 a.m.

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

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS 156.160, 157.370, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the physical welfare and safety of public school children, the transportation of such children to and from school, and the operation of school buses; and KRS 157.370 references the method of calculating transportation costs for the state public school funding program. This administrative regulation establishes guidelines and procedures whereby the Department of Education, through its Division of Pupil Transportation answerable to the chief state school officer, may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes for the Fund to Support Education Excellence in Kentucky which are necessary to determine the calculated pupil transportation program cost for each district which provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8 and 9, and shall keep the curriculum up-to- date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum.

Section 3. **A** [~~No~~] person shall **not** be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of thirty-three (33) [~~twenty-five (25)~~] hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the chief state school officer. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation shall have the authority to make safety inspections of any and all school buses and special type vehicles either owned by the board or contracted to the board being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, the Division of Pupil Transportation shall have the authority to prohibit further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil Transportation shall have the authority to prohibit the use of school buses or special type vehicles used for the transportation of pupils, which have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky. These vehicles shall remain out of service until approved by the Division of Pupil Transportation as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Fund to Support Education Excellence in Kentucky and the Division of Pupil Transportation in making a pupil transportation system survey for the district.

Section 8. The Division of Pupil Transportation shall be responsible for the training and approval of state school bus inspectors.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: January 15, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services
(As Amended)

703 KAR 4:050. Operational standards defining ratios for the major classifications of classified employees.

RELATES TO: **KRS 158.685, 158.780, 158.785,** 1992 Acts, Ch. 462 - General Assembly Budget Memorandum

STATUTORY AUTHORITY: KRS 156.070**, 158.685**, 1992 Acts, Ch. 462 - General Assembly Budget Memorandum

NECESSITY AND FUNCTION: The 1992 General Assembly Budget Memorandum directed the State Board for Elementary and Secondary Education to adopt operational standards under KRS 158.685 to define ratios for the major classifications of classified employees. This administrative regulation sets forth formulas to calculate staffing for three (3) classifications of classified personnel in the local school districts including custodians, food service staff, and secretaries.

Section 1. (1) The number of full-time equivalent custodians in the school district shall be computed according to the following formula:

Custodians = .75 ((.03 x CS) + (.001 x SE) + (.045 x SF))

where:

(a) CS equals total certified staff;

(b) SE equals school enrollment; and

(c) SF equals square feet/1,000.

(2) The actual number of full-time equivalent custodial employees shall not exceed the number of custodians computed by this formula by more than ten (10) percent, unless other factors such as the age of the building, condition of the building, use of the building, safety and security reasons, and type of heating system indicate additional staff are justified.

Section 2. (1) The following school food service staffing guidelines shall be used to determine the maximum number of total labor hours that each school shall employ to produce the number of meal equivalents served:

# of Meal Equivalents Served (ME's)	Meals Per Labor Hour (MPLH)	Total Labor Hours	Full-Time Equivalents (FTE's)
Up to 100	8	9-12	2.25-3
101-150	9	12-16	3-4
151-200	10-11	16-17	4-4.25
201-250	12	17-20	4.25-5
251-300	13	20-22	5-5.50
301-400	14	22-29	5.50-7.25
401-500	14	29-35	7.25-8.75
501-600	15	35-40	8.75-10
601-700	16	40-43	10-10.75
701-800	17	43-47	10.75-11.75
801-900	18	47-51	11.75-12.75
901-1,200	19	52-80	13.00-20.00
1,201-1,500	19	63-100	15.75-25.00
1,501-1,800	19	79-120	19.75-30.00
1,801-2,100	19	95-140	23.75-35.00

KEY:

1. ME's: 2 breakfasts = 1 ME; 1 lunch = 1 ME; $2 of Misc. Ala Carte = 1 ME

2. Recommended meals per labor hour based on meal equivalents served

3. Total labor hours = hours devoted to preparation, serving and cleanup employed in the kitchen

4. FTE's = 4 hours per day; TOTAL LABOR HOURS - by 4

(2)(a) The maximum number of food service employees for each operating kitchen in the district shall be computed from the guidelines in the chart in subsection (1) of this section.

(b) The FTE's derived in computing the formula for each operating kitchen shall be added together to determine the total number of FTE's for the district.

(3) The FTE's for the district shall not exceed the maximum authorized in the guidelines by more than ten (10) percent unless other factors, such as cafeteria capacity and equipment limitations, justify additional personnel.

Section 3. (1) The number of secretarial positions in the school district shall be computed according to the following formula: secretarial staff = (.076 x CS) + (.001 x SE), where CS equals total certified staff and SE equals the total student enrollment.

(2) The number of formula-generated secretarial staff employees shall not exceed the maximum authorized by this computation by more than ten (10) percent, unless special district circumstances justify additional personnel.

Section 4. (1) Local school districts shall be notified in writing by the Department of Education of these formulas which may be utilized as a guide to determine classified personnel staffing ratios in the district.

(2) Action may be taken against a local school district for noncompliance with these standards only if a comprehensive audit conducted by the Kentucky Department of Education pursuant to KRS 156.200, 156.210, or **158.785** **[~~157.780~~]** reveals that the noncompliance substantially contributed to a pattern of serious mismanagement or operational inefficiency and ineffectiveness in the district.

THOMAS C. BOYSEN, Commissioner
JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: January 15, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on Labor and Industry, and became effective, on March 9, 1993.

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; **and** the time frame in which such treatment **is proposed to continue.** [~~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.

Section 7. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: January 4, 1993
FILED WITH LRC: January 4, 1993 at 4 p.m.

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

902 KAR 10:045. Tattoo artist registration, tattoo studio certification and inspection. [~~Tattoo studio sanitary procedures.~~]

RELATES TO: KRS Chapter 211, 211.760, 211.990
STATUTORY AUTHORITY: KRS 194.050, Chapter 211, 211.760
NECESSITY AND FUNCTION: KRS 211.760 requires **persons who engage in or carry on any business of tattooing humans** [~~tattoo studios~~] to register with local health departments and directs the Cabinet for Human Resources to promulgate administrative regulations relating to health and cleanliness of places of business, sterilization of tattooing apparatus, procedures to prevent the spread of disease and other administrative regulations as may be necessary to protect public health. The function of this administrative regulation is to set forth the standards required by KRS 211.760.

Section 1. Definitions. (1) "Adequate ventilation" shall mean a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

(2) "Minor" shall mean any person under the age of eighteen (18) years.

(3) **"Studio certificate of sanitation" means the issuance of a document by the local health department to a tattoo studio certifying that said studio, after inspection, was found to be in compliance with the applicable provisions of this administrative regulation.**

(4) "Tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(5) "Tattoo artist" means any person who engages in the business of tattooing.

(6) "Tattoo artist registration" means the issuance of a written instrument authorizing the person named therein to engage in the business of tattooing.

(7) "Tattoo operator" means any person who controls, operates, conducts or manages any tattoo studio, whether actually engaging in the business of tattooing or not.

(8) [~~(4)~~] "Tattoo studio" shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

(9) [~~(5)~~] "Antibacterial solution" means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

(10) [~~(6)~~] "Germicidal solution" means any solution which destroys germs, and is so labeled.

(11) [~~(7)~~] "Sterilization" means holding in an autoclave for **fifteen (15)** [~~twenty five (25)~~] minutes, at fifteen (15) pounds pressure, at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius.

(12) "Sanitary" means clean and free of agents of infection or disease.

(13) "Sanitized" means effective bacterial treatment by a process that provides sufficient concentration of chemicals for enough time to reduce the bacteria count including pathogens to a safe level on equipment.

Section 2. Tattoo Artist Registration. (1) No person shall engage in the business of tattooing or act as a tattoo artist unless such person has registered as tattoo artist with the local health department in the district or county where the person is to engage in the business of tattooing.

(2) No holder of any studio certificate of sanitation issued under this administrative regulation shall allow a tattoo artist to engage in the business of tattooing unless the tattoo artist is a holder of a valid tattoo artist registration issued under subsection (1) of this section.

(3) Any person desiring to engage in the business of tattooing or act as a tattoo artist shall submit an application for a tattoo artist registration to the local health department in the district or county in which the person is to engage in the business of tattooing.

(4) A tattoo artist registration shall expire on December 31 of each year.

(5) All tattooing by a tattoo artist shall be under the auspices of a certified studio.

(6) A provisional tattoo artist registration may be issued for a period not to exceed fourteen (14) days. The holder of the studio certificate of sanitation shall apply for the provisional tattoo artist registration and all tattooing performed by the holder of a provisional tattoo artist registration shall be under the auspices of the studio certificate of sanitation and in compliance with the provisions of this administrative regulation. A provisional tattoo artist registration is not transferable nor may it be renewed.

Section 3. Studio Certificate of Sanitation. (1) No person shall operate a tattoo studio unless the person has been registered

and the studio has a certificate of sanitation issued by the local health department in the district or county in which the person is to engage in the business of tattooing.

(2) No studio certificate of sanitation shall be issued or renewed unless the studio has been inspected and found to be in compliance with the applicable provisions of this administrative regulation.

(3) The studio certificate of sanitation shall expire on December 31 of each year.

(4) Records of all studio certificates of sanitation shall be kept on file by the local health department in district or county in which tattooing is performed.

Section 4. Operation Procedures for Studios and Artists. (1) Sanitary procedures.

(a) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with warm running water, antibacterial soap, and individual hand brush that is clean and in good repair, then air blown or dried by single use towel prior to beginning work on each person or when interrupted in the process.

(b) Disposable, latex examination gloves shall be worn during the tattooing process. Gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.

(2) Each tattoo artist shall wear a clean outer garment, apron, smock, T-shirt, etc.

(3) Tattoo artists who are experiencing symptoms of diarrhea, vomiting, fever, rash, productive cough, jaundice or draining (or open) skin infections, boils, impetigo or scabies shall refrain from tattooing activities.

(4) Only sterilized or single use, disposable razors shall be used to shave the area to be tattooed.

(5) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an antibacterial solution.

(6) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, it shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty (20) minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.

(7) If a paper stencil is used by a tattoo artist for transferring the design to the skin, it shall be single use and disposable.

(8) If the design is drawn directly onto the skin, it shall be applied with a single use article only.

(9) A registered tattoo artist or certified tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.

(10) Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon, and stencils shall be provided for each tattoo artist and shall be maintained in a sanitary manner, which protects them from contamination.

(11) Bulk single use articles shall be commercially packaged and handled to protect them from contamination. Storage of single use articles shall not be in a toilet room or vestibule of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(12) Work tables and chairs or benches shall be provided for each tattoo artist.

(a) The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light- colored, nonabsorbent, corrosive-resistant, and easily sanitized.

(b) Work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application.

(c) Existing tattoo studios on the effective date of this administrative regulation shall be exempt from the required color of the work table.

(13) All materials applied to the human skin shall be from single use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

(14) No pets, except working dogs, guide dogs or security dogs from a certified trainer, shall be permitted in the studio.

(15) Records.

(a) For each patron, proper records of tattoos administered shall be maintained by the holder of a studio certificate.

(b) Records of each patron shall be prepared prior to any procedure being performed and shall include the patron's name and signature, address and age, the date tattooed, the design of the tattoo, its location on the patron's body, and the name of the tattoo artist who performed the work.

(c) Records shall be entered in ink or indelible pencil, shall be available at a reasonable time for examination by the local health department in the district or county where the tattoo is performed. The signature of the patron shall be on the record.

(d) Before tattoo administration, there shall be a discussion conducted with the patron on the risks involved in the tattoo requested, and its possible complications, which shall be entered in the record.

(e) Records required by this administrative regulation shall be kept on file for five (5) years by the holder of the studio certification for the studio in which the tattoo was performed.

(16) Consent.

(a) Written consent for tattooing of minors shall be obtained from one (1) parent or guardian.

(b) Records of the written consents shall be kept on file for five (5) years by the holder of the studio certification for the tattoo studio in which the tattoo was performed.

(c) The person receiving the tattoo shall attest to the fact that they are not intoxicated or under the influence of drugs or alcohol.

(17) Instructions.

(a) Printed instructions on the care of skin shall be given to each patron or customer after tattooing as a precaution to prevent infection.

(b) A copy of instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed.

(18) Dyes or pigments.

(a) In preparing dyes or pigments to be used by a tattoo artist, only nontoxic sterile materials shall be used. Single-use or individual portions of dyes or pigments in clean, sterilized individual containers or single-use containers shall be used for each patron.

(b) After tattooing, the remaining unused dye or pigment in the single-use or individual containers shall be discarded along with the container.

(c) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(19) Sterilization of needles.

(a) A set of individual, sterilized needles shall be used by a tattoo artist for each patron.

(b) To guard against a potential temptation to reuse single-service needles because of exhaustion of existing supplies, not less than twenty-four (24) sets per studio of sterilized needles and tubes shall be on hand for the entire day or night operation. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization.

(c) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(d) If used instruments are ultrasoniced prior to being placed in the used instrument container, they shall be ultrasoniced, and then rinsed under running hot water prior to being placed in the

used instrument container.

(e) The ultrasonic unit shall be sanitized with a germicidal solution daily.

(f) If used instruments are not ultrasoniced prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(g) Nondisposable instruments including the needle tubes shall be sterilized and shall be handled as to prevent contamination. Instruments to be sterilized shall be sealed in bags specifically made for the purpose of autoclave sterilization, and include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.

(h) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization shall be utilized during the autoclave sterilization process.

(i) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them.

(j) No rusty, defective or faulty instruments shall be kept in the studio.

(20) Aftercare of tattoo.

(a) The completed tattoo shall be washed with a single-use towel saturated with an antibacterial solution.

(b) After drying, antibacterial solution shall be applied from a collapsible metal or plastic tube and the entire area covered with a single-use covering, which may, in turn, be covered with gauze and fastened to the site with adhesive tape.

[~~Section 2. Studio Sanitation. (1) The tattoo artist's hands shall be washed and then air blown or dried by single use towel prior to beginning work on each person or when interrupted in the process. In addition, disposable, latex examination gloves shall be worn during the tattooing process. The gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.~~

~~(2) Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon, and stencils shall be provided for each operator and shall be maintained in a sanitary manner, which protects them from contamination.~~

~~(3) Bulk single use articles shall be commercially packaged and handled in such a way as to protect them from contamination. Storage of single use articles shall not be in a toilet room or vestibule of toilet rooms nor under nonpotable water lines or exposed sewer lines.~~

~~(4) Work tables and chairs or benches shall be provided for each tattoo artist. The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light colored, nonabsorbent, corrosive resistant, and easily sanitized. The work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application. All existing tattoo studios on the effective date of the administrative regulation shall be exempt from the required color of the work table.~~

~~(5) All materials applied to the human skin shall be from single use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.~~

~~(6) No pets, except working dogs, i.e., guide dogs or security dogs from a certified trainer, shall be permitted in the studio.~~

~~Section 3. Operation Standards. (1) Records.~~

~~(a) For each patron, proper records of tattoos administered shall be maintained by the holder of a studio registration.~~

~~(b) A record of each patron shall be prepared prior to any procedure being performed and shall include the patron's name and signature, address and age, the date tattooed, the design of the tattoo, its location on the patron's body, and the name of the tattoo artist who performed the work.~~

~~(c) Each record shall be entered in ink or indelible pencil, shall be available at a reasonable time for examination by the cabinet. The signature of the patron shall be on the record.~~

~~(d) Before tattoo administration, there shall be a discussion conducted with the patron on the risks involved in the tattoo requested, and its possible complications, which shall be entered in the record.~~

~~(e) All records required by this administrative regulation shall be kept on file for five (5) years by the holder of the studio registration for the studio in which the tattoo was performed.~~

~~(2) Consent.~~

~~(a) Written consent for tattooing of minors shall be obtained from one (1) parent or guardian.~~

~~(b) The records of the written consents shall be kept on file for five (5) years by the holder of the studio registration for the tattoo studio in which the tattoo was performed.~~

~~(c) The person receiving the tattoo shall attest to the fact that they are not intoxicated or under the influence of drugs or alcohol.~~

~~(3) Tattooing procedures.~~

~~(a) Printed instructions on the care of the skin shall be given to each patron or customer after tattooing as a precaution to prevent infection.~~

~~(b) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed.~~

~~(c) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.~~

~~(d) Tattoo artists who are experiencing symptoms of diarrhea, vomiting, fever, rash, productive cough, jaundice or draining (or open) skin infections such as boils, impetigo or scabies shall refrain from tattooing activities.~~

~~(e) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap, and individual hand brush that is clean and in good repair.~~

~~(f) The tattoo artist's hands shall be air blown dried or be dried by a single use towel. In addition, disposable, latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.~~

~~(g) Only sterilized or single use, disposable razors shall be used to shave the area to be tattooed.~~

~~(h) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an antibacterial solution.~~

~~(i) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, it shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty (20) minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.~~

~~(j) If a paper stencil is used by a tattoo artist for transferring the design to the skin, it shall be single use and disposable.~~

~~(k) If the design is drawn directly onto the skin, it shall be applied with a single use article only.~~

~~(l) A registered tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.~~

~~(4) Dyes or pigments.~~

~~(a) In preparing dyes or pigments to be used by a tattoo artist, only nontoxic sterile materials shall be used. Single use or individual portions of dyes or pigments in clean, sterilized individual containers or single use containers shall be used for each patron.~~

~~(b) After tattooing, the remaining unused dye or pigment in the single use or individual containers shall be discarded along with the container.~~

~~(c) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the~~

~~tattooing of human skin.~~

~~(5) Sterilization of needles.~~

~~(a) A set of individual, sterilized needles shall be used by a tattoo artist for each patron.~~

~~(b) To guard against a potential temptation to reuse single service needles because of exhaustion of existing supplies, not less than twenty four (24) sets per studio of sterilized needles and tubes shall be on hand for the entire day or night operation. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization.~~

~~(c) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap, and then sterilized by autoclaving.~~

~~(d) If used instruments are ultrasoniced prior to being placed in the used instrument container, they shall be ultrasoniced, and then rinsed under running hot water prior to being placed in the used instrument container.~~

~~(e) The ultrasonic unit shall be sanitized with a germicidal solution daily.~~

~~(f) If used instruments are not ultrasoniced prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap, and then sterilized by autoclaving.~~

~~(g) All nondisposable instruments including the needle tubes shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags specifically made for the purpose of autoclave sterilization, and include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.~~

~~(h) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization shall be utilized during the autoclave sterilization process.~~

~~(i) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them.~~

~~(j) No rusty, defective or faulty instruments shall be kept in the studio.~~

~~(6) Aftercare of tattoo.~~

~~(a) The completed tattoo shall be washed with a single use towel saturated with an antibacterial solution.~~

~~(b) After drying, antibacterial solution shall be applied and the entire area covered with a single use covering, which may, in turn, be covered with gauze and fastened to the site with adhesive tape.~~]

Section 5. [~~4.~~] Facilities and Equipment. (1) General physical environment.

(a) Tattoo studios shall have at least fifty (50) footcandles of light **measured at the height of the work table.**

(b) Tattoo studios shall have [~~and~~] adequate ventilation.

(c) [All] Walls and ceilings shall be smooth and easily cleaned. Walls and ceilings shall be painted a light color.

(d) [(~~b~~)] The floor of the tattoo work room shall be [~~constructed of~~] impervious material. The floor shall be swept and wet mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is in operation.

(e) [(~~c~~)] Convenient, clean, and sanitary toilet and handwashing facilities shall be made accessible to customers.

(f) [(~~d~~)] The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat, and free of litter and rubbish.

(2) Work room.

(a) Each tattoo studio shall have a **separate** work room **not** [~~separate and apart from a waiting room or any room or rooms~~] used for any other purpose.

(b) [~~The~~] Work rooms shall not be used as a corridor for access to other rooms.

(c) Patrons or customers shall be tattooed only in the work room.

(d) [~~(b) The~~] Work rooms shall be equipped with hot and cold running water, and one (1) sink or basin per artist operating at the same time.

(e) [~~(c) The~~] Sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing.

(f) **Sinks** [~~They~~] shall be equipped with foot, wrist, or single lever action controls, soap, a germicidal solution, single use towels, and individual hand brushes clean and in good repair for each tattoo artist.

(g) [All] Plumbing shall be in compliance with the State Plumbing Code under KRS Chapter 318.

(h) [(~~d~~)] No person shall consume any food or drink [~~nor smoke~~] in the work room.

(3) A registered tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.

Section 6. [~~5.~~] Disposal of Waste. **Waste products shall be disposed of by the tattoo studio operators in the following manner:** [~~The tattoo studio operator shall provide for the proper and safe disposal of all types of waste products.~~]

(1) Needles, scalpels, razors or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant, closed containers immediately after use.

(2) Needles shall not be purposely bent or broken, or otherwise manipulated by hand.

(3) [~~The~~] Containers of sharp wastes shall be sent to a facility where they are either incinerated or otherwise rendered nonhazardous.

(4) [All] Disposable waste shall be placed in easily cleanable, closed containers provided with tight fitting lids, [~~so as~~] to prevent leakage or spillage.

(5) Waste containers shall be kept closed when not in use.

(6) Disposable waste shall be handled, stored, and disposed of [~~in such a way as~~] to minimize direct exposure of personnel to waste materials.

(7) [All] Disposable waste shall be sprayed with a ten (10) percent chlorine solution immediately following each tattoo application.

Section 7. [~~6.~~] Inspection Fee. (1) An inspection fee is required for cost of inspections conducted by the local health department to determine compliance with administrative regulations.

(2) An annual inspection fee of $100 **shall be** [~~is~~] assessed for each tattoo studio **pursuant to KRS 194.050** [~~or business~~].

Section 8. [~~7.~~] Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction.

Section 9. Application for Registration of Artists, Certification of Studio, Inspection Form, and Tattoo Record Form. (1) Applications for registration as a tattoo artist shall be submitted to the local health department on application forms DFS-200, provided by the cabinet.

(2) Applications for certificate of sanitation shall be submitted to the local health department on application form DFS-303, provided by the cabinet.

(3) Inspections shall be conducted using inspection form DFS-342, provided by the cabinet.

(4) Each tattoo studio shall maintain the information indicated on the Tattoo Record, DFS-343.

(5) The application for registration, certification, and the inspection form are incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 10. Enforcement Procedures. (1) The artist registration and studio certificate of sanitation shall be suspended immediately upon notice to the holder without a hearing when the local health department has reason to believe that an imminent health hazard exists.

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the registrant or certificate holder a written notice specifying the violations and afford the registrant or certificate holder a reasonable opportunity to correct same.

(a) Whenever a registrant or certificate holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the artist registration or studio certification.

(b) The holder of the artist registration or studio certificate of sanitation shall be notified in writing that the registration or certificate shall be suspended at the end of ten (10) days following service of notice unless a request for a hearing is made to the local health department within the ten (10) day period.

(c) Any person whose registration or certification has been suspended may make a request in writing for reinstatement of the registration or certification.

(d) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the local health department in the performance of its duties the artist registration or certificate of sanitation may be permanently revoked after an opportunity for a hearing has been provided.

(e) Any temporary tattoo studio violation must be corrected within twenty-four (24) hours. If violations are not corrected the studio certificate of sanitation shall be immediately suspended. A hearing may be requested by the holder of the certificate of sanitation after suspension which shall be granted as soon as practical.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: November 10, 1992
FILED WITH LRC: November 11, 1992 at 1 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(As Amended)

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

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250
NECESSITY AND FUNCTION: KRS 218A.020(4) and 218A.090(4)(i) authorizes the Cabinet for Human Resources to exclude preparations that may be lawfully sold over the counter (without prescription) from the provisions relating to controlled substances of KRS Chapter 218A. The purpose of this **administrative** regulation is to exclude certain over-the-counter preparations from the provisions of the Kentucky Controlled Substances Act.

Section 1. Excluded [~~Exempt~~] Over-the-counter Products [~~Barbiturate Combination Preparations~~]. Any compound, mixture or preparation containing any nonnarcotic substance which **shall be** [~~is~~] excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1992 [~~1991~~] edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, **shall be** [~~is~~] excluded from the provisions of KRS Chapter 218A, the Controlled Substances Act. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 is on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and **shall be** [~~is~~] available for public inspection and copying Monday through Friday 8 a.m. - 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: November 4, 1992
FILED WITH LRC: November 25, 1992 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(As Amended)

902 KAR 55:045. Exempt prescription preparations.

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250
NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by regulation. The purpose of this **administrative** regulation is to delete and exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been deleted and exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products [~~Stimulant or Depressant Combination Preparations~~]. Any compound, mixture or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1992 [~~1991~~], edition of the Code of Federal Regulations, (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.32, Excepted Prescription Products, incorporated by reference, **shall be** [~~is~~] exempted from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.32 **shall be** [~~is~~] on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and **shall be** [~~is~~] available for public inspection and copying Monday through Friday 8 a.m. to 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: November 4, 1992
FILED WITH LRC: November 25, 1992 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

401 KAR 38:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50
STATUTORY AUTHORITY: KRS 224.10-220
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for hazardous waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This regulation sets forth timetables for the review and determination of hazardous waste permit applications.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 to 39.

Section 2. Timetables for Hazardous Waste Permit Review and Determination. (1) If a Part A application is required under KRS Chapter 224 and 401 KAR Chapters 30 to 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in subsection (2) of this section.

(2) All hazardous waste permit applications shall be reviewed and a determination made to issue or deny the permit within the following timetables:

(a) Part B Applications for New Hazardous Waste Permits for Storage in Containers or Tanks only: 180 calendar days.

(b) Part B Applications for New Hazardous Waste Permits for Storage and Treatment in Containers or Tanks: 365 calendar days.

(c) Part B Applications for New Hazardous Waste Incinerators: 365 calendar days.

(d) Part B Applications for Facilities with Land-based Units (Surface Impoundments, Waste Piles, Land Treatment Units, Landfills) and other Miscellaneous Units: 365 calendar days.

(e) Application Review for Major Modifications to a Hazardous Waste Permit: 365 calendar days.

(f) Minor Modifications to a Hazardous Waste Permit requiring approval: ninety (90) calendar days.

(g) Closure Plan with Groundwater Monitoring: 365 calendar days.

(h) Closure Plan without Groundwater Monitoring: 180 calendar days.

(i) Facilities that gain interim status through federal regulations published after the effective date of this regulation shall negotiate a schedule based on the procedures necessary to secure a complete review of the permit application.

(j) Applications for renewals shall be reviewed and a determination made to issue or deny the permit within the timetables identified in paragraphs (a) to (d) of this subsection for that type of facility.

(3) The timetables specified in subsections (1) and (2) of this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(4) If a hazardous waste permit application requires more than one (1) type of permit action as set forth in subsection (2) of this section, then the review time for each permit action shall apply and run consecutively when computing the total review time for the issuance or denial of the permit.

Section 3. Timetable Exclusions. The time periods specified in Section 2 of this regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant. Failure to respond to a notice of deficiency within the specified time shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(3) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives EPA's comments;

(4) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings; and

(5) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

Section 4. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 5. Applicability Dates. (1) The provisions of this regulation shall apply to applications received after the effective date of this regulation.

(2)(a) **The provisions of this regulation shall not apply to applications pending on the effective date of this regulation unless,** [~~Applications pending on the effective date of this regulation shall not be subject to the timetables of this regulation unless,~~] within ninety (90) days of the effective date of this regulation, the applicant submits written notification to the cabinet that **the applicant desires to have the application subject to this regulation** [~~processing of the application is desired~~].

(b) If the applicant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application shall not be subject to the provisions of this regulation.

(c) Applications for which the cabinet receives written notice in accordance with the provisions of paragraph (a) of this subsection shall be subject to all provisions of this regulation beginning on the

date the cabinet receives the notice provided for in paragraph (a) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1993
FILED WITH LRC: March 12, 1993 at 9 a.m.

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

401 KAR 45:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50
STATUTORY AUTHORITY: KRS 224.10-220
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This regulation sets forth timetables for the review and determination of special waste permit applications and registrations.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45.

Section 2. Administrative Completeness Determination. (1) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet. An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

(b) If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, **unless a longer time period is approved by the cabinet**.

(c) The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant renders the application or registration administratively complete within the specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

2. If the cabinet determines that the application or registration is not administratively complete at the end of the period specified in this subsection, the cabinet shall make a written determination to deny the permit with the stated reason that the application or registration, in its current form, fails to comply with the requirement to submit a complete application. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered as if not previously submitted for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination. (1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

(a) Special Waste Formal Permit: 180 calendar days.

(b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.

(c) Registered Permit-by-rule: ninety (90) calendar days.

(d) Research, Development, and Demonstration Permit: 180 calendar days.

(e) Special Waste Permit modifications: 180 calendar days.

(f) Permit transfer: 180 calendar days.

(g) Permit renewal: ninety (90) calendar days.

(h) Any other permit action not specifically set forth in this section: ninety (90) calendar days.

(2) The timetables specified in subsection (1) of this section may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods specified in Section 3 of this administrative regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing [~~or meeting~~] on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be

accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 6. Applicability Dates. (1) The provisions of this administrative regulation shall apply to applications and registrations received after the effective date of this administrative regulation.

(2)(a) **The provisions of this regulation shall not apply to applications and registration pending on the effective date of this regulation unless,** [~~The cabinet shall not process applications and regulations pending on the effective date of this administrative regulation unless,~~] within ninety (90) days of the effective date of this administrative regulation, the applicant or registrant submits written notification to the cabinet that **the applicant or registrant desires to have the application or registration subject to this regulation.** [~~processing of the application or registration is desired.~~]

(b) If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall **not be subject to the provisions of this regulation.** [~~be considered withdrawn by the applicant or registrant and shall not be subject to further processing by the cabinet.~~]

(c) Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1993
FILED WITH LRC: March 12, 1993 at 9 a.m.

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

401 KAR 47:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50
STATUTORY AUTHORITY: KRS 224.10-220
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of solid wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all solid waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications and registrations. This administrative regulation sets forth timetables for the review and determination of solid waste permit applications and registrations.

Section 1. Submittal of Permit Applications and Registrations. (1) The official date of receipt for documents associated with a solid waste permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30, 47, and 48.

Section 2. Administrative Completeness Determination. (1) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by KRS Chapter 224 and 401 KAR Chapters 30, 47, and 48 that are necessary to allow meaningful review by the cabinet. An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

(b) If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, **unless a longer time period is approved by the cabinet**.

(c) The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant renders the application or registration administratively complete within the specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

2. If the cabinet determines that the application or registration is not administratively complete at the end of the period specified in this subsection, the cabinet shall make a written determination to deny the permit with the stated reason that the application or registration, in its current form, fails to comply with the requirement to submit a complete application. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered as if not previously submitted for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination. (1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

(a) Application to Construct a New Solid Waste Disposal Facility or to Horizontally Expand an Existing Solid Waste Disposal Facility: the timetable is specified in KRS 224.40-310(10).

(b) Research, Development, and Demonstration Permit: 180 calendar days.

(c) Permit modifications: 180 calendar days.

(d) Closure Permit: 180 calendar days.

(e) Permit transfer: 180 calendar days.

(f) Permit renewal: 180 calendar days.

(g) Registered Permit-by-rule: ninety (90) calendar days.

(h) Any other permit action not specifically set forth in this section: ninety (90) calendar days.

(2) The timetables specified in subsection (1) of this section may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods specified in Section 3 of this administrative regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a complete response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing ~~[or meeting]~~ on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions. If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished. The established time frame for final action shall not exceed the maximum period of time that is provided for under applicable statutes and regulations, based on all applications being considered and their filing dates.

Section 6. Applicability Dates. (1) The provisions of this administrative regulation shall apply to applications and registrations received after the effective date of this administrative regulation.

(2)(a) **The provisions of this regulation shall not apply to applications and registrations pending on the effective date of this regulation unless,** ~~[The cabinet shall not process applications and registrations pending on the effective date of this administrative regulation unless,]~~ within ninety (90) days of the effective date of this administrative regulation, the applicant or registrant submits written notification to the cabinet that **the applicant or registrant desires to have the application or registration subject to this regulation.** ~~[processing of the application or registration is desired.]~~

(b) If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall **not be subject to the provisions of this regulation.** ~~[be considered withdrawn by the applicant or registrant and shall not be subject to further processing by the cabinet.]~~

(c) Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.

Section 7. Relationship to KRS 224.40-310(10). Applications processed under KRS 224.40-310(10) shall be subject to the provisions of Sections 1 and 4(1) of this regulation. The other provisions of this regulation shall not apply to applications processed under KRS 224.40-310(10).

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1993
FILED WITH LRC: March 12, 1993 at 9 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Amended After Hearing)

603 KAR 3:070. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 CFR Part 750, **23 USC 148**

STATUTORY AUTHORITY: KRS 177.860, 23 CFR Part 750, **23 USC 148**

NECESSITY AND FUNCTION: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation.

Section 1. Definitions. (1) "Advertising device" or "device" means as defined in KRS 177.830(5).

(2) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device:

(a) Has not displayed any advertising matter;

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial area" which is applied to interstate and parkway highways only means:

(a) The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or

(b) The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the

application for an advertising device permit.

(9) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(10) "Comprehensively zoned," which is applied to FAP highways only, means that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(11) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12) "Destroyed" means that the advertising device has sustained damage by any means in excess of sixty (60) percent of the depreciated replacement cost. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

(a) Adding guys or struts;

(b) Adding new supports or poles by splicing or attaching to existing supports;

(c) Adding separate new auxiliary supports or poles;

(d) Adding new or replacement peripheral or integral structural bracing or framing; or

(e) Adding new or replacement panels or facings.

(13) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(14) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3).

(15) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(16) "Interstate highway" means as defined in KRS 177.830(2).

(17) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(18) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(19) "Nonbillboard off-premise advertising device," which is applicable to FAP highways only, means an advertising device not located on the property which it is advertising and limited to advertising for a church or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(20) "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

(a) Zoning changes;

(b) Highway relocation;

(c) Highway reclassification; or

(d) Changes in restrictions on size, spacing or distance.

(21) "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included in these signs are:

(a) Signs denoting the location of underground utilities;

(b) Signs required by federal, state or local governments to delineate boundaries of reservations, parks or districts;

(c) Street signs or traffic control signs; or

(d) Signs required by state law.

(22) "On-premise advertising device" means an advertising device that contains a message relating to an activity or the sale of a product within the boundaries of the property on which the device is located.

(23) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to advertising devices, parkways shall be considered the equivalent of interstate highways.

(24) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(25) "Primary business or activity" means that the sale of one (1) product or business activity which takes precedence over any or all other product sales or business activities.

(26) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the state-owned highway right-of-way of the interstate, parkway and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet from the right-of-way of all interstate, parkway and FAP highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(27) "Public service sign," which is applicable to FAP highways only, means a sign erected or located on a school bus shelter.

(28) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition shall apply to signs on school bus shelters on FAP highways only.

(29) "Routine change of message"**, as it relates to a nonconforming advertising device,** means the message change on an advertising device is from one (1) advertised product or activity to another. This includes the lamination or preparation of panels inside a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(30) "Routine maintenance"**, as it relates to a nonconforming advertising device,** means:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device,

(b) The routine change of message; and

(c) The fixing of existing panels or facings at a location other than that of the advertising device;

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement of panels or facings or the addition of new panels or facings.

(31) "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(32) "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(33) "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(34) "Urban area" means as defined in KRS 177.830(10).

(35) "Visible" means capable of being seen whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected with the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except directional or other official signs or signals erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official devices including signs or devices placed by the Department of Highways;

(b) Signs or devices, limited in size to two (2) square feet, denoting the location of underground utilities; or

(c) Signs, limited in size to 150 square feet, erected by federal, state or local governments to delineate boundaries of reservations, parks or districts.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to advertising devices on interstate, parkway and FAP highways.

(1) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in protected areas:

(a) An advertising device which is advertising an activity that is illegal under state or federal law;

(b) An obsolete advertising device;

(c) An advertising device that is not clean and in good repair;

(d) An advertising device that is not securely affixed to a substantial structure;

(e) An advertising device illuminated by other than white lights;

(f) An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;

(g) An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of official signs or approaching or merging traffic;

(h) An advertising device which contains, includes or is illuminated by any flashing, intermittent or moving lights, except on-premise devices providing public service information including time, date, temperature or weather;

(i) An advertising device which uses lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle;

(j) An advertising device which moves or has any animated or moving parts;

(k) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(l) An advertising device exceeding 1,250 square feet in area, including border and trim but excluding supports;

(m) An advertising device erected upon or overhanging the right-of-way of any highway; or

(n) An advertising device which interferes with any official sign, signal or traffic control device.

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS Chapter 177 shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming advertising device may continue to exist until just compensation has been paid to the owner, only so long as it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of subsection (1) of this section.

(e) Performance of other than routine maintenance on a nonconforming device shall cause it to lose its status and to be classified as illegal.

(5) Vandalized nonconforming device.

(a) The owner of a nonconforming advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible;

2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

3. Ownership of the advertising device;

4. Dimensions of the destroyed advertising device;

5. Material used in erection of the destroyed advertising device;

6. Durability of the new device;

7. Stanchion type; and

8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(6) Required measuring methods.

(a) To establish protected areas, distances from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) To measure distances for the determination of spacing for advertising devices, a line shall be drawn perpendicular from each advertising device to the centerline of the highway to embrace the greatest longitude along the centerline of the highway.

(c)1. V-shaped or back-to-back type billboard advertising devices shall not be more than fifteen (15) feet apart at the nearest point between the two (2) billboards and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) billboards shall not be greater than forty-five (45) degrees.

(d) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(7) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) V-shaped or back-to-back billboard advertising devices shall be considered as specified in KRS 177.863(2)(b);

(c) A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

(d)1. The issuance of billboard permits as they relate to the required spacing between the billboards shall be determined on a "first-come, first-served" basis.

2. Proof of lease or ownership of a site shall accompany the application for a permit submitted to the Department of Highways pursuant to Section 6 of this administrative regulation.

3. An approved advertising device application shall only be valid for one (1) year. If the device has not been constructed in that year, the applicant shall apply for renewal of his approved application prior to erecting the advertising device.

(e) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(f) A billboard advertising device may only be illuminated by white lights.

(8) Criteria for on-premise advertising devices. The following criteria are applicable to all on-premise advertising devices located in a protected area:

(a) An on-premise advertising device shall have the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet of the advertised activity boundary lines.

(b) Only one (1) on-premise device may be located at a distance greater than fifty (50) feet from the activity boundary line.

(c) An on-premise advertising device shall not exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports if it is farther than fifty (50) feet

from the activity boundary line.

(d)1. An on-premise advertising device shall not be located more than 400 feet, measured within the property boundary, from the advertised activity.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) Only the following types of on-premise advertising devices shall be located so that they are visible from the main traveled way of an interstate, parkway or FAP highway:

1. Those indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. Those showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. Those advertising the sale or leasing of the property upon which the advertising device is located;

5. Those setting forth the advertisement of an activity or sale of products on the property where the advertising device is located; or

6. Signs with a maximum area of eight (8) square feet noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall advertise only the activity or business conducted upon the property on which it is located.

(h) Brand names shall not be advertised in an on-premise advertising device when the sale of an item with the brand name is incidental to the primary activity or business.

(i) A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.

(j) Industrial park type on-premise advertising devices which shall be limited in area to 150 square feet may contain only the following messages:

1. The name of the industrial park;

2. The city or county associated with the industrial park; or

3. The name of the individual business or industries located in the industrial park.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) Billboard advertising devices may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercial or industrial area and if the advertising device complies with the provisions of KRS Chapter 177 and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations,

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet is visible from the interstate or parkway highway at any one time.

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary Highways. (1) Billboard advertising devices on FAP highways. Billboard advertising devices may be permitted in protected areas of FAP highways if they are located in unzoned commercial or industrial areas or commercial or industrial zones and if the devices comply with applicable state, county or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an FAP highway as long as there is a commercial or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of a FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet from the right-of-way of the FAP highway.

(d)1. Minimum spacing between billboard advertising devices in unzoned commercial or industrial areas shall be 300 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet within incorporated municipalities which do not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near FAP highways, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet in each direction.

(3) Nonbillboard off-premise advertising devices on FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of any FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device

relating to a particular church or civic organization may be erected in each direction of travel on any one (1) FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet.

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) Church or civic club type nonbillboard advertising devices which shall be limited in area to eight (8) square feet may contain only the following messages:

1. Name and address of the church or civic club;

2. Location and time of meetings, and a directional arrow; or

3. Special events such as Vacation Bible School, revival, etc. These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet in area.

(4) Public service sign criteria. Public service signs may be allowed if they conform to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation is required for on-premise advertising devices on FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a) Application for an advertising device permit shall be made on form TC 99-31 **as revised in December, 1992**. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. The application form is hereby incorporated by reference as a part of this administrative regulation.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;

2. Applicant's plot plan;

3. Location, milepoint and sign plans for the advertising device;

4. A copy of all applicable local permits;

5. A copy of the lease, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph or drawing.

(c) The applicant shall submit three (3) copies of all required documentation.

(d) Copies of this application form may be viewed, copied or obtained from the Department of Highways, Division of Traffic, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Division of Traffic is (502)564-3020. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner of the advertising within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall take legal action to have the noncompliant advertising device removed or otherwise brought into compliance.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;

2. It receives more than routine maintenance; or

3. It does not comply with the provisions of Section 3(1) of this administrative regulation.

Section 9. Scenic Byways. **(1)** On any highway designated by the Transportation Cabinet or the Federal Highway Administration as a scenic byway **including the Great River Road**, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic, regardless of

the highway classification.

(2) The Great River Road segments are the following:

(a) KY 94 from the Tennessee state line in Fulton County to KY 239 in Hickman County;

(b) KY 239 from KY 94 in Hickman County to KY 123 in Carlisle County;

(c) KY 123 from KY 239 to KY 1022 in Carlisle County;

(d) KY 1022 from KY 123 to US 51 in Carlisle County; and

(e) US 51 in Carlisle County to the Illinois state line.

Section 10. Repeal of Regulation. 603 KAR 3:060, Advertising devices on interstate, parkway and federal-aid primary highways is repealed.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: March 5, 1993
FILED WITH LRC: March 9, 1993 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Amended After Hearing)

804 KAR 4:310. Caterer's license.

RELATES TO: KRS 243.033
STATUTORY AUTHORITY: KRS 241.060, 243.033
NECESSITY AND FUNCTION: KRS 243.033 establishes a caterer's license and authorizes the board to set the necessary conditions and restrictions upon this license.

Section 1. License Issuance and Application Requirements. The distilled spirits administrator and the malt beverage administrator, jointly, may issue a license to a caterer for premises that contain a **permitted** [~~licensed~~] and inspected commissary. A license may be issued only upon proper application and upon meeting the requirements set forth in KRS 243.020 to 243.670 for licenses to sell alcoholic beverages. Proof of a **retail food establishment permit** [~~caterer's license~~] issued by the **Cabinet for Human Resources shall** [~~Board of Health must~~] accompany the license application.

[~~Section 2. Location of Storage Premises. The premises for storage of alcoholic beverages purchased under the caterer's license shall be separate from any retail package licensed premises or any retail drink licensed premises.~~]

Section **2.** [~~3.~~] Vehicle Identification. **Signs shall be painted on or securely attached to all vehicles used by the licensee to transport alcoholic beverages by magnetic-type signs in a color (or colors) contrasting with the color of that portion of the vehicle upon which the sign is placed, one (1) on both the right and left sides and one (1) on the rear; the side signs shall be in uniform letters, not less than three and one-half (3 1/2) inches high, in the following form:**

(Name of Licensee)
Ky. Caterer's License No.

and the rear sign shall be in uniform letters of not less than two and one-half (2 1/2) inches high in the following form:

Ky. Caterer's License No.

[~~The name, license type and license number of the caterer shall be painted upon all vehicles used by the caterer to transport alcoholic beverages as per 804 KAR 8:050. The word "caterer" may not be abbreviated.~~]

Section **3.** [~~4.~~] Advertising. Advertising practices **shall** [~~will~~] conform to 804 KAR 1:100

Section 4. Food Percentage Requirement. The receipts from the catering of food at any catered event shall be at least thirty-five (35) percent of the gross receipts from the catering of both food and alcoholic beverages, otherwise, alcoholic beverages may not be catered at that event.

Section 5. Reporting of Functions. Caterer licensees shall submit a list of functions **where alcoholic beverages are served**, both those catered since the last submission and those to be catered, including location, host, date and time, to the Department of Alcoholic Beverage Control on the first business day of each month.

D.B. GRUGIN, Commissioner
APPROVED BY AGENCY: March 11, 1993
FILED WITH LRC: March 11, 1993 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 13:120. Workers' compensation small deductible policies.

RELATES TO: KRS 304.13-057, 304.13-400 to 304.13-420
STATUTORY AUTHORITY: KRS 304.2-110, 304.13-410
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.13-410 provides that premium reductions for deductible workers' compensation insurance policies shall be calculated by the insurer in accordance with administrative regulations promulgated by the Commissioner of Insurance. This administrative regulation establishes the method of calculating premium reductions for workers' compensation insurance policies with deductibles.

Section 1. All insurers authorized to write workers' compensation insurance in Kentucky, when establishing the premium for a workers' compensation insurance policy with a deductible **ranging from $100 to $10,000** [~~,~~] shall use only the following deductibles: $100, $200, $300, $400, $500, $1,000, $1,500, $2,500, $5,000, $7,500, $10,000.

Section 2. Application of this Administrative Regulation. (1) General.

(a) This administrative regulation applies to all insurers and licensed advisory organizations introducing or revising workers' compensation insurance deductible discounts **for policies with deductibles of $100 to $10,000** or their application in Kentucky.

(b) A licensed advisory organization filing shall be self- contained and fully documented and shall not simply adopt the deductible plan or factors of another filing. An insurer may file a self-contained and fully documented deductible discount plan or it may choose to adopt the filed deductible plan and discounts of a licensed advisory organization or another insurer.

(2) Form of the deductible. The deductible discounts shall be determined by the multiplication of the deductible discount factors by the manual premiums. Separate deductible discounts for each deductible option shall be applicable for each hazard group defined in Appendix A.

(3) Experience and retrospective rating. Experience rating modifications shall be based on net losses and premiums, that is, losses net of deductibles and manual premiums less the deductible discount. The parameters of the experience rating plan shall also be adjusted to account for the deductible.

(4) Premium discount programs. For insurers that have a premium discount program based on the standard premium of a policy, the deductible discounts shall be applied prior to the application of premium discounts. The deductible discount **shall be** ~~[is]~~ calculated by multiplying the discount factor by the manual premium. Premium discounts then are calculated based on the standard premium, after deductibles.

Section 3. Methodology. (1) General. The deductible discount recognizes the reduction in losses (claim costs) borne by the insurer as a result of the insured's selection of a deductible. The most critical factor in the calculation is the loss elimination ratio ("LER"), which estimates the percentage of losses eliminated as a result of the deductible. Typically, two (2) types of adjustments are required to calculate the deductible discount from the LER:

(a) Recognition of factors which imply additional costs or savings associated with the deductible. These include credit risks that the insured will not repay the insurer for the deductible amount, changes in insurer cash flow, and higher levels of risk and possible antiselection. These types of factors are treated in this **administrative** regulation as adjustments to the otherwise indicated LER.

(b) Recognition that many insurer operating expenses are not reduced by the introduction of deductibles. This consideration is treated in this administrative regulation through the deductible discount formula.

(2) Formula.

(a) The formula for pricing of deductibles in Kentucky shall be as follows:

$$p(x) = \frac{(1 - c - k - r + i)\,sd(x)\,E}{E + e + a}$$

where:

p(x) - is the discount factor for a deductible of "x";

a - is loss adjustment expenses as a percentage of standard premiums after premium discounts (based on the insurer's filings);

c - is a factor to account for credit risk;

d(x) - is the LER, which is defined as the percentage of losses eliminated by the deductible;

e - is the general expenses as a percentage of standard premium after premium discounts (based on the insurer's filings);

E - is the losses excluding loss adjustment expense as a percentage of standard premiums after premium discounts;

i - is a factor to account for the differences in investment income earned by the insurer between policies with deductible and those without a deductible;

k - is a factor to account for interest on the loan due to prepayment of losses below the deductible;

r - is a factor to account for the increased risk associated with deductible policies; and

s - is a factor to account for adverse selection.

(b) Loss adjustment expenses include allocated and unallocated expenses. General expenses include all expenses incurred other than loss adjustment expense, commissions, and other expenses that vary directly with the premium. Losses are expected losses for a policy with no deductible. The manual premium shall be used to calculate loss and expense ratios.

(c) Loss elimination ratio. The loss elimination ratio **shall be** ~~[is]~~ determined by the size of loss distribution. To determine the size of loss distribution function it is necessary to analyze historical data. The analysis **shall** ~~[will]~~ determine a mathematical function or a discrete empirical distribution table.

1. Source of data. The data used in the analysis shall be relevant and appropriate. The ideal data for analysis is recent Kentucky-based number of claims and dollars of loss for medical and indemnity combined, by size of loss and hazard group on a per occurrence basis. The current National Council on Compensation Insurance Unit Statistical Plan incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays, may be used subject to the following adjustment:

a. The per claimant size of loss distribution shall be adjusted by scaling the x axis by a factor of five (5) percent to ten (10) percent. That is, if s(x) is the probability density function of the per claimant size of loss distribution and f(x) is the probability density function of the per occurrence size of loss distribution, and the adjustment factor is selected as ten (10) percent, then f(x) equals s(x/1.1).

b. An alternative to this **shall be** ~~[is]~~ to estimate mathematically the per occurrence size of loss distribution using a simulation method or by taking convolutions of the size of loss distribution. In either case, key inputs **shall be** ~~[are]~~ the size of claims distribution and the distribution of the number of claimants per occurrence. Methodology shall be fully documented in the filing.

c. If a filer has data that is more suitable for the determination of deductible discounts than National Council on Compensation Insurance Unit Statistical Plan data, its use **shall be** ~~[is]~~ encouraged.

(d) Trending.

1. The size of loss distribution or data shall be trended to the effective period of the deductible factors. The trend factor shall be consistent with the historical data and with the most recent rate filing. The trend period shall reflect the average accident date of the underlying data and the average accident date of those policies issued during the effective period of the deductible factors.

2. While trends may affect the shape of the size of loss distribution, these adjustments are difficult to codify and are probably not significant in the short term. Thus, filers may use the assumption that the effect of the trend is uniform for claims of all sizes. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(e) Loss development. Loss development for losses below $10,000 has a significantly shorter "tail" than for total losses. The assumption that no development takes place on this layer of loss after three (3) to five (5) years may be used in the calculation of the LER. Thus, the size of loss distributions below $10,000 shall be taken as:

$$F(x) = g(x)/LDF \quad x \leq \$10{,}000$$

Where g(x) is the distribution function determined from the size of loss data reported as of three (3) to five (5) years and LDF is the loss development factor to ultimate for all claims. Alternative assumptions may be used if thoroughly documented and supported in the filing.

(3) Investment income and increased risk.

(a) It is expected that loss payments by the insurer on losses from policies with deductibles **shall** ~~[will]~~ be made later than those from policies without deductibles, since the insured is responsible for losses below the deductible which would be paid first. Losses above a deductible are also more volatile than losses from the first dollar of loss. The increased volatility increases the risk borne by the insurer.

(b) The adjustment for investment income works in a direction opposite that of the adjustment for increased risk. It shall be assumed that these items completely offset each other. If the filer wishes to include an explicit factor for one (1) of these items, the filer shall also include an explicit factor for the other, and the filing document shall support the use of these factors.

(4) Loan on the prepayment of losses.

(a) The provision in KRS 304.13-400(3)(a) that every dollar of loss that is eliminated by the deductible **shall** ~~[will]~~ first be paid by an insurer and then be reimbursed by the insured amounts to a loan, the effects of which may be recognized in the filing. This factor shall be equal to the amount or proportion of dollars that are eliminated by the deductible times a reasonable interest rate to account for the loss in investment income.

(b) This rate shall reflect the investment earned during the period of the loan. Insurers shall reflect repayment of losses three (3) months after the claim. Thus, the factor "k" **shall be** ~~is~~ determined by the following formula:

$$k = (1+y)^{1/4} - 1$$

Where y is the yield on ninety (90) day United States treasury bills.

(5) Adverse selection. In some lines of insurance there has been evidence of antiselection with respect to deductibles, that is, those that choose to purchase insurance with a deductible tend to have losses that exceed those losses which are expected. LERs may be reduced for adverse selection by up to five (5) percent, unless a greater reduction is clearly supported by facts such as loss ratios by deductible and class which clearly show that the deductible discounts are consistently, across classes and time, high. For the initial filing, data from other states with deductibles **may** ~~can~~ be used to support the selection of the factor.

(6) Credit risk. This factor is intended to account for losses below the deductible paid by insurers and not reimbursed by insureds due to bankruptcy. If the percentage of businesses that become bankrupt annually in Kentucky is expected to be "z," then the load should assume that z% of the amount "on loan" **shall** ~~will~~ not be reimbursed. This **shall be** ~~is~~ calculated as follows:

$$c = z/4$$

Factors between 0 and 2.5% may be used.

Section 4. Effect on Rate Making. (1) Data. Rate-making data from the National Council on Compensation Insurance Unit Statistical plan shall be modified to include a field indicating the deductible on the policy. Financial data calls shall also segregate data by deductible.

(2) Gross versus net data. KRS 304.13-057 requires that net data be used in rate making. However, adjustments to net data shall be made in the rate-making process to account for the presence of deductibles. That is, losses shall be loaded by the LER (adjusted for antiselection) to a gross basis prior to the rate- making process. The LER and antiselection factor shall be the same as in the current approved filing.

(3) Methodology. Rate-making methods shall be modified to account for the presence of deductibles. For example, there shall be an adjustment in classification rate making for differences in the distribution of exposures by deductible among classes. Also, there shall be an adjustment in the trending procedure for the presence of a shift in the distribution by deductible.

Section 5. Interrogatories to be Answered in Rate Filings. Every rate filing for a workers' compensation insurance deductible shall include a completed interrogatories form as set forth in Appendix B to this regulation.

APPENDIX A
TABLE OF CLASSIFICATIONS BY HAZARD GROUP

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
0005	II	1438	III	2065	II
0008	II	1452	III	2070	III
0016	II	1463	III	2081	II
0034	II	1470	III	2089	II
0035	II	1472	III	2095	II
0036	II	1624	III	2101	II
0037	II	1642	III	2105	II
0042	III	1654	III	2110	II
0050	II	1655	III	2111	II
0079	II	1699	III	2112	II
0083	II	1701	III	2114	II
0106	III	1710	III	2121	II
0113	II	1741	IV	2130	II
0169	II	1747	III	2131	II
0170	II	1748	III	2143	II
0251	II	1803	IV	2150	II
0400	II	1852	III	2156	II
0401	III	1853	II	2157	II
0908	II	1860	II	2172	I
0909	II	1924	II	2174	I
0912	II	1925	III	2177	I
0913	I	2001	II	2211	III
0917	II	2002	II	2220	II
1005	III	2003	III	2286	II
1164	IV	2014	III	2288	II
1165	III	2016	II	2300	I
1219	IV	2021	II	2302	II
1320	III	2030	III	2305	II
1322	III	2039	II	2361	I
1430	III	2041	I	2362	II

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
2380	I	2747	I	3082	III
2386	I	2759	II	3085	III
2388	II	2790	II	3091	II
2402	III	2802	II	3110	II
2413	II	2812	II	3111	II
2416	II	2826	II	3113	II
2417	II	2835	I	3114	II
2501	II	2836	I	3118	II
2503	II	2841	II	3119	I
2534	II	2881	II	3122	II
2570	III	2883	II	3126	II
2576	I	2913	II	3131	I
2578	II	2915	III	3132	III
2585	II	2916	II	3145	I
2586	II	2923	II	3146	II
2587	II	2942	I	3169	II
2589	II	2960	II	3175	II
2600	II	3004	III	3179	II
2623	II	3018	II	3180	II
2651	II	3022	II	3188	II
2660	II	3027	II	3220	II
2670	I	3028	II	3223	I
2683	II	3030	III	3224	I
2688	I	3040	III	3227	II
2702	III	3041	II	3240	II
2710	III	3042	II	3241	II
2714	II	3064	II	3255	I
2731	III	3066	II	3257	II
2735	II	3076	II	3270	II
2741	I	3081	III	3300	I

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
3303	II	3824	II	4301	II
3307	II	3826	III	4304	III
3315	II	3827	II	4307	II
3334	II	3830	III	4308	II
3336	II	3851	II	4350	II
3365	III	3865	I	4351	II
3372	III	3881	II	4352	II
3373	II	4000	IV	4360	II

3383	II	4021	III	4361	II
3385	II	4024	III	4362	III
3400	III	4034	III	4410	II
3507	II	4036	III	4417	II
3515	II	4038	I	4420	III
3548	II	4053	II	4431	I
3559	II	4061	II	4432	I
3565	I	4062	II	4439	III
3574	II	4063	II	4452	II
3581	II	4101	III	4459	II
3612	III	4111	II	4470	III
3620	III	4112	II	4484	II
3629	II	4113	II	4493	II
3632	II	4114	II	4511	II
3634	II	4130	II	4557	II
3635	II	4131	II	4558	II
3638	II	4133	II	4561	II
3639	II	4150	I	4568	III
3642	II	4206	II	4581	III
3643	III	4207	II	4583	III
3647	III	4239	III	4611	II
3648	II	4240	II	4635	IV
3681	II	4243	II	4653	II
3685	II	4244	III	4665	III
3719	III	4250	II	4670	III
3724	III	4251	I	4683	II
3726	III	4263	II	4686	III
3803	II	4273	II	4692	II
3807	II	4279	II	4693	II
3808	II	4282	II	4703	II
3821	III	4283	II	4717	I
3822	II	4299	II	4720	II

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
4740	III	5221	III	6236	III
4741	II	5222	III	6237	III
4743	III	5223	III	6251	III
4751	III	5348	III	6252	III
4770	IV	5402	II	6260	IV
4773	IV	5403	III	6306	III
4774	IV	5437	III	6319	III
4775	IV	5443	II	6325	III
4776	IV	5445	III	6400	II
4777	III	5462	III	6504	II
4779	IV	5474	III	6801F	III
4799	IV	5479	III	6811	III
4800		5480	III	6824F	III
thru		5491	III	6826F	III
4811	IV	5506	III	6834	III
4812		5507	III	6836	III
thru		5508	III	6843F	IV
4825	III	5538	III	6845F	III
4860		5551	III	6854	IV
thru		5606	III	6872F	IV
4883	IV	5610	III	6874F	III
4902	I	5645	III	6882	IV
4923	II	5651	III	6884	III
5020	III	5703	III	7133	III
5022	III	5705	III	7219	III
5037	IV	5951	II	7222	III
5040	IV	6003	III	7230	III
5057	IV	6005	III	7231	III
5059	IV	6017	III	7309F	IV
5069	III	6018	III	7313F	IV
5102	III	6045	III	7317F	IV
5146	II	6204	III	7323F	IV
5160	III	6206	IV	7327F	IV
5183	III	6213	III	7350F	IV
5188	III	6214	III	7360	III
5190	III	6216	III	7370	III
5191	III	6217	III	7380	III
5192	II	6229	III	7382	III
5213	III	6233	III	7390	III
5215	II	6235	III	7403	II

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
7405	IV	8006	II	8204	III
7418	IV	8008	II	8209	II
7420	IV	8010	II	8215	II
7421	IV	8013	II	8227	III
7422	IV	8017	II	8232	III
7423	III	8018	II	8233	III
7425	IV	8021	II	8235	II
7431	IV	8031	II	8236	II
7502	III	8032	II	8263	II
7515	IV	8033	II	8264	II
7520	III	8039	II	8265	III
7538	IV	8044	II	8279	II
7539	III	8046	II	8288	II
7540	IV	8047	II	8291	II
7580	III	8050	II	8292	II
7590	II	8058	II	8293	II
7600	III	8061	II	8304	III
7601	III	8102	II	8350	III
7605	III	8103	II	8380	III
7610	III	8105	II	8381	II
7704	IV	8106	III	8385	III
7720	IV	8107	III	8392	III
7855	III	8111	II	8393	III
8001	I	8116	II	8500	III
8002	II	8203	II	8601	III

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
8606	III	9019	III	9410	III
8709F	III	9033	II	9501	I
8710	III	9040	II	9505	I
8719	III	9052	II	9519	III
8720	III	9058	II	9521	III
8726F	III	9060	III	9522	II
8742	III	9061	II	9529	IV
8745	II	9063	II	9534	III
8748	III	9077F	II	9545	III
8755	III	9079	II	9549	III
8800	II	9088	IV	9552	III
8803	III	9089	II	9586	I
8810	II	9093	I	9600	II
8820	II	9101	II	9620	II
8829	II	9102	III		
8831	II	9154	III		
8832	III	9156	II		
8833	II	9178	II		
8835	II	9179	II		
8837	II	9180	III		
8868	II	9182	II		
8901	III	9186	III		
9014	II	9220	II		
9015	III	9402	III		
9016	II	9403	III		

APPENDIX B
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY 40601

INTERROGATORIES FOR WORKERS' COMPENSATION
INSURANCE DEDUCTIBLE RATE FILINGS

1. Are the deductible discounts the same as those current on file for another insurer or advisory organization?
Yes_____ No_____

2. If yes, name the insurer(s) or advisory organization(s):

_____

3. List the deductible discount factors to be used:

Deductible	Hazard Group I	II	III	IV
$ 100				
200				
300				
400				
500				
1,000				
1,500				
2,500				
5,000				
7,500				
10,000				

4. List the parameters of the formula set forth in 806 KAR 13:120§3(2)(a):

i) Loss Elimination Ratio by Deductible:

Deductible	Hazard Group I	II	III	IV
$ 100				
200				
300				
400				
500				
1,000				
1,500				
2,500				
5,000				
7,500				
10,000				

ii) Trend Factor(s):

iii) Loss Development Factors:

Age of Development	Factor
_____ to Ultimate	_____
_____ to Ultimate	_____
.	.
.	.
.	.

iv) Investment income and increased risk factors (list on separate sheet if necessary):

a) Do they offset each other? ____ Yes ____ No

b) If NO, is documentation provided? ____ Yes ____ No

v) Factor to account for the loan on prepayment of losses (list on separate sheet if necessary):

_____

vi) Adverse selection adjustment:

_____

If the above factor is greater than 5%, provide documentation.

vii) Credit risk adjustment: _____

5. How are deductibles accounted for in the rate-making methodology?

6. How are deductibles accounted for in the experience rating plans?

Form WCD-1 (11-92)

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 2, 1993
FILED WITH LRC: March 8, 1993 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Amended After Hearing)

815 KAR 10:040. Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227
STATUTORY AUTHORITY: KRS 227.300
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable administrative regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. This administrative regulation shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety and shall be used, where applicable, as a supplement to the Kentucky Building Code. This administrative regulation is necessary to establish minimum fire safety standards especially for buildings not constructed in accordance with applicable building codes in existence at time of construction. These standards are enforceable, as provided in this administrative regulation, by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320. This administrative regulation includes the substance of 815 KAR 10:020, which is being repealed. This amendment is necessary to provide for the installation of compressed natural gas self-service stations under conditions limiting access to the pumps to knowledgeable persons (i.e., company fleets). [~~This amendment is necessary to create new definitions, comply with certain KRS Chapter 13A requirements and to clarify and update the fire safety standards in several categories (e.g., laboratories, testing of alarm and sprinkler systems, recordkeeping of fire drills in schools, flammable finishes, specifying precise NFiPA editions). In addition, specific language for flammable liquid plant operations and LP gas installations have been added.~~]

Section 1. Definitions. (1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a

substitute for another code requirement because the substitute meets the intent of the code.

(2) "Code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this code and the codes and standards adopted herein. (See "Fire code official")

(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.

(4) "Common path of travel" means that portion of exit access that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.

(5) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature of rate-of-temperature rise.

(6) "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of fire or explosion or other impending disaster that may be a threat to life or property.

(7) "Dwelling or private dwelling" means a single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(8) "Fire alarm box, manual" means a manually operated alarm-initiating device that, when operated, closes or opens one (1) or more sets of contacts.

(9) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(10) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this administrative regulation and the codes and standards adopted herein. (See "Code official")

(11) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(12) "Fire detector, automatic" means an alarm-initiating device that automatically detects heat, smoke or other products of combustion.

(13) "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wildland).

(14) "Fire prevention code" means the BOCA National Fire Prevention Code, 1990 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction and otherwise known as the Kentucky Standards of Safety.

(15) "Fire protection" means the provision of construction safeguards and exit facilities and the installation of fire alarm, fire-detecting and fire-extinguishing service equipment to reduce the fire risk and conflagration hazard.

(16) "Fire protective signaling system, central station" means a central office, connected to remote alarm and supervisory signaling devices, where personnel shall be in attendance at all times to monitor the system activity and investigate signals. The central-station personnel shall take immediate and appropriate action upon receipt of an alarm signal.

(17) "Fire protective signaling system, local" means a local system that sounds an alarm at the protected premises as the result of the manual operation of a fire alarm box or the operation of fire protection equipment or systems such as water flowing in a sprinkler system, the discharge of CO^2 or Halon, or the detection of smoke or heat.

(18) "Fire protective signaling system, proprietary" means an installation of protective signaling systems that shall serve contiguous and noncontiguous properties under one (1) ownership from a central supervising station located at the protected property, where trained, competent personnel shall be in constant attendance.

(19) "Fire protective signaling system, remote station" means an installation using supervised circuits to transmit alarm, supervisory and trouble signals from one (1) or more protected premises to a remote location at which appropriate action shall be taken.

(20) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.

(21) "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(22) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(23) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.

(24) "Kentucky fire incident report" means a form for the reporting of fires which shall be obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(25) "LED" means level of exit discharge.

(26) "NFiPA" means the National Fire Protection Association.

(27) "Occupancy classification" means the various use groups as classified in the Kentucky Building Code and set forth in Section F-202.0 of this code.

(28) "Place of assembly" means buildings or portions thereof used for gathering together fifty (50) or more persons for purposes set forth in F-202.0, Use Group A, of this code.

(29) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use or any combination of any commodity or material regulated by this code.

(30) "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(31) "Smoke barrier" means a continuous membrane, either vertical or horizontal, such as a wall, floor, approved door, or ceiling assembly, that is designed and erected with construction materials to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. These barriers shall have protected openings.

(32) "Smoke detector, multiple station" means single-station smoke detectors that are capable of being interconnected in a way that the actuation of one (1) causes all integral or separate audible alarms to operate.

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

(34) "Smoking" means a lighting, igniting, holding or possession of any lighted cigar, cigarette or pipe.

(35) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

(36) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of

automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a pressure switch on a dry pipe sprinkler system, etc.).

(37) "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in a manner as to endanger the safety of any person or property.

(38) "Use group" means the classification of a building or structure based on the purpose for which it is intended to be used.

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

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1990, 8th Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this administrative regulation, with specific changes to the BOCA Code set forth in Sections 3 through 25 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) Amend subsection F-100.1 to read as follows: "F-100.1 Title: These administrative regulations as set forth herein shall be known as the Kentucky Standards of Safety (Fire Prevention Code) and are herein referred to as same or as "this code"."

(2) Create a new subsection to read as follows: "F-100.5 Intent of Code: It is the express intent of this code to provide a reasonable degree of safety for human life. Therefore, where the purpose of any provision of this code can be fulfilled by other means, the specific requirements of this code may be modified by the fire code official to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical. Nothing in this code is intended to invalidate any lawfully adopted local government ordinance."

(3) Create a new subsection, "F-100.6 Continuation of Use" to read as follows:

(a) "F-100.6.1 The use and occupancy of any building which was constructed after the implementation of the Kentucky Building Code and for which there has been issued a lawful certificate of use or occupancy by the building code official may be continued without change so long as it is maintained and used as originally permitted and approved."

(b) Create a new subsection, F-100.6.1.1 to read as follows: "F-100.6.1.1 A condition or installation which was not constructed in accordance with applicable provisions of the edition of the Kentucky Building Code which was in effect when it was constructed, shall be considered an unlawful use or occupancy subject to F-100.6.2 and other applicable provisions of this code."

(c) "F-100.6.2 The use and occupancy of a building, other than a building covered by F-100.6.1, existing on the date of adoption of this code may be continued without change except as may be specifically covered by this code and deemed necessary by written decision of the fire code official for the life safety of the occupants and the public under Article 1 and 4 of this code."

(4) Create a new subsection, "F-100.7 Change in Use" to read as follows:

(a) "F-100.7.1 It shall be unlawful to make any change in the use of any structure or portion thereof with the potential to create a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without the written approval of the building official if required by the Kentucky Building Code."

(b) "F-100.7.2 Any proposed new use not subject to the Kentucky Building Code shall comply with the provisions of this code relating to the new use, as required by the fire code official."

(5) Create subsection F-100.8 to read as follows: "F-100.8 Certificate of Use and Occupancy. If the fire code official finds an existing building or facility to be in substantial compliance with the intent of this code and there are no violations of any order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use and occupancy of the building or facility and that use may continue without change as allowed by F-100.6.1. Upon request, the building code official shall cooperate with the fire code official, pursuant to Section 106 of the Kentucky Building Code, in assessing existing buildings for relative fire safety."

(6) Amend subsection F-101.2 to read as follows: "F-101.2 Existing buildings: Buildings built under, and in full compliance with, the codes in force at the time of construction or alteration and that have been properly maintained and used as originally permitted, shall be exempt from the requirements of this code pertaining to any of the following matters:

1. Fire protection of structural elements.

2. Exits required, except as provided for existing buildings under this code.

3. Isolation of hazardous operations and mixed uses; provided, however, that the fire code official shall require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where they are necessary to provide safety to life and property. In lieu of requiring the installation of safety devices or systems or if necessary to secure safety in addition thereto, the fire code official shall prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property."

(7) Amend subsection F-101.3 to read as follows: "F-101.3 Application of building code: The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code and any alterations, additions or changes in buildings required by the provisions of this code which are within the scope of the Kentucky Building Code shall be made in accordance with the standards set forth therein."

(8) Delete subsections F-101.4 and F-101.4.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(9) Amend subsection F-101.6 to read as follows: "F-101.6 Compliance Alternatives:

(a) "F-101.6.1 If this code requires a particular system, condition, arrangement, material, equipment, or any other particular provision, the fire code official may grant alternatives if he finds that the alternative(s) are consistent with the intent of this code to provide adequate protection for life safety. The decision shall be written and shall provide a reasonable time to comply with the terms of the alternatives."

(b) "F-101.6.2 An application for an alternative may be filed with the fire code official by the owner or occupant and shall be accompanied by evidence, letters, statutes, results of tests or other supporting information as may be required to justify the request. The fire code official shall keep a record of action on applications and a signed copy of the fire code official's decision shall be provided for the applicant. Acceptance of an alternative by the fire code official shall signify compliance with this code under the provision for which an alternative is offered. Failure of the property owner or occupant to comply with the alternatives granted shall void the alternative."

(10) Create subsection "F-101.7 Exempted Facilities" to read as follows:

(a) "F-101.7.1 State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources or the Department of Corrections shall not be to comply with the provisions of the fire prevention code if they

are inspected and approved by the Office of the State Fire Marshal in accordance with federally mandated codes or the edition of NFiPA Pamphlet #101 (The Life Safety Code) under which the facility was initially approved. This code shall not make changes in the standards previously applicable to these facilities."

(b) "F-101.7.2 This code shall not apply to single family dwellings."

(11) Amend F-104.1 to read as follows: "F-104.1 Enforcement officer: It shall be the duty and responsibility of the State Fire Marshal, his designee, or local fire code official acting pursuant to lawful ordinance adopting this code to enforce the provisions of the fire prevention code as herein set forth. The designated enforcement officer of this code is herein referred to as the fire code official."

(12) Amend subsection F-104.5 by changing the reference of Section F-112.0 to Section F-108.0.

(13) Create a new subsection to read as follows: "F-104.9 Interpretations: Formal interpretations of the provisions of this code shall be issued by the State Fire Marshal upon written request, and a record of these interpretations shall be maintained by the State Fire Marshal and regularly communicated to persons who purchased the Fire Prevention Code book and others who are registered with the State Fire Marshal to be on the mailing list. These interpretations shall be used by all fire code officials to provide consistency in the understanding and enforcement of this Code. Upon adoption of these Standards of Safety by any unit of local government, pursuant to KRS 227.320, all interpretations of the Standards of Safety promulgated by the commissioner shall be interpreted likewise by the State Fire Marshal and the interpretations shall be used by all local fire code officials in the understanding and enforcement of this Code."

(14) Delete subsections F-105.6; F-105.7 and F-105.8 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(15) Amend subsection F-106.2 to read as follows: "F-106.2 Permits required: Local permits, if adopted by city or county ordinance, shall be obtained from the local fire code official according to the local adopting legislation. Inspection or permit fees, if any, shall be stipulated in the local adopting legislation. Permits shall be kept in the premises designated therein and shall be subject to inspection by the fire code official."

(16) Create subsection F-106.8 to read as follows: "F-106.8 The State Fire Marshal shall not become involved in the local permit process, and if local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute, administrative regulations and this code and inspected accordingly."

(17) Amend Section "F-108.0 Means of Appeal" to read as follows:

(a) "F-108.1 Local Appeals: A party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "F-108.1.1 State Fire Marshal appeals: Appeals from decisions of the State Fire Marshal or by his delegated authority, pursuant to KRS 227.230, shall be made in accordance with the provisions of KRS Chapter 227."

(18) Amend subsection F-109.3 to read as follows: "F-109.3 Unsafe buildings. Buildings and structures that are or shall become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. The fire code official or authorized fire chief shall order the unsafe conditions to be remedied in accordance with this code or removed."

(19) Amend subsection F-111.2 to read as follows: "F-111.2 Failure to correct violations: If the notice of violation is not complied with within the time specified by the fire code official, the fire code official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto."

(20) Create a new subsection, F-111.5, to read as follows: "F-111.5 Compliance with a later edition of a standard required by this code shall be deemed equivalent and may be used by the owner in lieu of the edition specified in Appendix A."

(21) Delete subsections F-112.0 through F-112.7 from Article 1 of the 1990 edition of the BOCA National Fire Prevention Code in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table F-202 below.

TABLE F-202

1.	Use Group A	assembly (See Section F-202.2)
2.	Use Group B	business (See Section F-202.3)
3.	Use Group E	educational (See Section F-202.4)
4.	Use Group F	factory and industrial (See Section F-202.5)
5.	Use Group H	high hazard (See Section F-202.6)
6.	Use Group I	institutional (See Section F-202.7)
7.	Use Group M	mercantile (See Section F-202.8)
8.	Use Group R	residential (See Section F-202.9)
9.	Use Group S	storage (See Section F-202.10)
10.	Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "F-202.2.1 General. All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "F-202.2.2 Use Group A-1, theaters: This use group shall include theaters and other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code listed in Appendix A."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) "F-202.2.4 Use Group A-3 structures: This use group shall include buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger

terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums, stadiums, amusement park structures and fair or carnival structures. These structures shall comply with the provisions of the Kentucky Building Code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: Buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "F-202.5.1 General. Buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "F-202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "F-202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "F-202.6.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "F-202.6.2 Exceptions: The following shall not be classified as Use Group H but shall be classified in the usage group which they most nearly resemble:

1. A building or portion of a building containing less than the exempt amount of those materials shown in Table F-202.6 when maintained in accordance with this code.

2. Buildings containing rooms conforming to the requirements of Article 6 of the Kentucky Building Code listed in Appendix A.

3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m^3) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

4. Rooms used for preparation or storage of food products for retail sale on the premises.

5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

6. Liquor stores and distributors without bulk storage.

7. The storage or use of materials for agricultural purposes for use on the premises.

8. Closed systems housing flammable or combustible liquids or gases used for the operations of machinery or equipment.

9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, if this use is separated from all other areas of the building by one (1) hour fire-resistance rated construction.

10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).

11. Refrigeration systems.

12. Tire retail stores without bulk storage.

13. Any other building or portion thereof which is exempt from this classification by the Kentucky Building Code listed in Appendix A."

(c) The following table shall apply to this section:

"F-TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS, LIQUIDS AND CHEMICALS

	Material	Maximum quantities[e]
1.	Flammable Liquids	
	Class 1-A	30 gal.[b]
	Class 1-B	60 gal.[b]
	Class 1-C	90 gal.[b]
2.	Combustible liquids[c]	
	Class II	120 gal.[b]
	Class III-A	250 gal.[b]
3.	Combination flammable liquids[a]	120 gal.[b]
4.	Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70oF.
5.	Liquefied flammable gases	60 gal.
6.	Combustible fibers-loose	100 cu. ft.
7.	Combustible fibers-baled	1,000 cu. ft.
8.	Flammable solids	500 lbs.
9.	Unstable material	No exemptions
10.	Corrosive liquids	55 gal.
11.	Oxidizing material-gases	6,000 cu. ft.
12.	Oxidizing material-liquids	50 gal.
13.	Oxidizing material-solids	500 lbs.
14.	Organic peroxides	10 lbs.
15.	Nitromethane (unstable materials)	No exemptions
16.	Ammonium nitrate	1,000 lbs.
17.	Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18.	Highly toxic material and poisonous gas	No exemptions
19.	Smokeless powder	20 lbs.[d]
20.	Black sporting powder	5 lbs.[d]

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.

Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.

Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in

Appendix A shall be permitted.

Note d. Maximum quantities in the amount specified by NFiPA 495 shall be permitted when stored in accordance with NFiPA 495 listed in Appendix A.

Note e. 1 gallon = 0.00379 m^3, 1 cubic foot = 0.028 m^3, 1 pound = 0.454 kg."

(d) "F-202.6.3 Multiple hazards. Buildings in this category shall be further classified H1 - H4 as set forth in the Kentucky Building Code and materials representing hazards that are classified in one or more of the Use Group H subuses shall conform to the code requirements for each of the use groups so classified."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 General. Licensed institutional facilities shall conform to Section F-101.2.1."

(b) "F-202.7.2 Jails. Jails shall conform to the requirements of the Corrections Cabinet. State prisons shall conform to the requirements of the Life Safety Code, NFiPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to these purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the Kentucky Building Code listed in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group R in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures. This use group shall include hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include multiple-family dwellings (apartment buildings) having more than two (2) dwelling units, except as provided in Section F-202.9.4 and shall also include boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.3.1 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.4 Use Group R-3 structures: This use group shall include buildings arranged for the use of one (1) or two (2) family dwelling units adjacent to or located above one another if they are completely separated by fire-resistance rating, if required by the Kentucky Building Code, and each unit has independent means of egress."

(f) "F-202.9.5 Use Group R-4 structures: This use group shall include detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: Buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. These uses shall be classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES. F-202.11.1 General: Buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the Kentucky Building Code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible container or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. These receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-303.1 to read as follows: "F-303.1 General: Any person using a torch or other flame or heat producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after each use of the torch, flame or heat producing device."

(3) Create subsection F-304.2 to read as follows: "F-304.2 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: If approved by the fire code official."

(4) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall conform to the requirements of this code and NFiPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(5) Amend subsection F-306.1 as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in a quantity to constitute a fire hazard, unless the materials are flame retardant."

(6) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: A parade float utilizing special effects designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(7) Create a new subsection, F-306.4, to read as follows: "F-306.4 Decorations. Furnishings or decorations of an explosive or highly combustible character shall not be used."

(8) Amend Section F-307 as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(9) Delete subsection F-307.3.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(10) Amend Section F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits of residue and grease in the system whenever buildup of residue and grease is apparent."

(11) Delete subsection F-310.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(12) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

(13) Create a new subsection, F-310.3, to read as follows: "F-310.3 An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(14) Create a new subsection, "F-310.4 Cleaning", to read as follows:

(a) "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

(b) "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

(c) "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

(d) "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(15) Amend subsection F-311.1 to read as follows: "F-311.1 General: All required fire-resistance rated doors or smoke barriers shall be maintained in good working order including the hardware necessary for its proper operation. The use of door stops, wedges and other unapproved hold-open devices shall be prohibited. All self-closing and automatic-closing devices shall be of an approved type. Fire doors or smoke barriers may be maintained in an open position if an approved automatic-closing device actuated by automatic smoke detectors are also to be installed."

(16) Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions exist to make smoking a fire hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section F-701.6."

(17) Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, noncombustible ash trays or match receivers shall be provided on each table and at other convenient locations. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(18) Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus: All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that buildings and water supplies on the premises are at all times accessible to fire apparatus. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the locally authorized fire department of the jurisdiction. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by local ordinance on recommendation of the local fire department. A person shall not park a motor vehicle on, or otherwise obstruct, a required fire lane and motor vehicles shall not be parked within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(19) Amend subsection F-313.2 to read as follows: "F-313.2 Vertical clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, if the reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(20) Amend subsection F-314.1 to read as follows: "F-314.1 Abatement of electrical hazards: If electrical hazards are identified, the conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in accordance with NFiPA 70 listed in Appendix A."

(21) Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(22) Delete subsection F-315.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(23) Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain fuels prohibited. Solid fuel or Class I flammable liquids shall not be used as fuel for an asphalt (tar) kettle."

(24) Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

(a) "F-315.6.1 Open flame. Open flame in an asphalt (tar) kettle while in transit shall be prohibited."

(b) "F-315.6.2 Latching devices. Kettle doors or lids shall be closed and secured while in transit."

(c) "F-315.6.3 Asphalt (tar) kettles on trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck shall be prohibited. Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFiPA 385 listed in Appendix A."

(25) Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: If required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for the activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display the film."

(26) Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: If required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty- five (25) pounds (11.35 kg) of cellulose nitrate (phroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(27) Create a new Section, "F-319.0 Reporting Fires and Hazardous Substances" and subsections F-319.1 through F-319.3.1 to read as follows:

(a) "F-319.1 Reporting emergency conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

1. "F-319.1.1 Unfriendly fires. If an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

2. "F-319.1.2 Hazardous materials. If state or local legislation has

been adopted specifying reportable quantities of hazardous materials released, notification shall conform to the provisions of legislation."

(b) "F-319.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.

2. A fire or fire related fatality (including vehicles and single family dwellings).

3. A fire or fire related injury serious enough to become a fatality.

4. A fire involving major structural damage in a regulated building, including:

a. Institutional, educational, state owned or state leased and high hazard occupancies.

b. Business, mercantile and industrial occupancies having a capacity over 100 persons.

c. Assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(c) "F-319.3 Fire Department Operations at Emergencies. The highest ranking fire department officer conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of these operations, including the investigation of the cause of the emergency or the situation which required fire department notification, the highest ranking officer may control or prohibit the approach to the scene of the emergency by any vehicle, vessel, thing or person."

(d) "F-319.3.1 Fire scene control. The operations of the fire department shall not be obstructed in connection with the extinguishment of any fire, or the actions relative to other emergencies, or lawful commands of the highest ranking officer in charge of the emergency, or orders of a police officer assisting the fire department shall not be disobeyed."

Section 6. Article 4. (1) Create a new subsection "F-400.4 Purpose and Intent" to read as follows:

(a) "F-400.4.1 Every building or structure shall be provided with exits of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford the occupants convenient facilities for escape."

(b) "F-400.4.2 In existing buildings, it is not always practical to strictly apply the provisions of this code. Physical limitations may require disproportionate effort or expense with little increase in life safety. In these cases, the fire code official shall be satisfied that reasonable safety shall be assured."

(c) "F-400.4.3 In an existing building, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life even though the circumstances are not literally in compliance with the code."

(d) "F-400.4.4 The requirements for existing buildings may be modified if their application clearly would be impractical in the judgment of the fire code official, but only where it is clearly evident that a reasonable degree of safety shall be provided."

(2) Create a new subsection F-400.5 to read as follows: "F-400.5 Alternatives and Modifications. Compliance with this section may be used by the fire code official in lieu of other specific provisions of the code to satisfy the intent of the code as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and other appropriate circumstances. Because all building systems interact with each other, any consideration of compliance alternatives shall take into account all existing and proposed conditions to determine their original or continued acceptability.

These alternatives are not all-inclusive and shall not preclude consideration and approval of other appropriate alternatives by the fire code official. Buildings with alternative fire protection features accepted by the fire code official shall be considered as conforming with this code."

(a) "F-400.5.1 Inadequate number of exits:

1. Provide connecting fire-exit balconies, acceptable to the enforcement authority, between buildings; or

2. Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority; or

3. Provide an exterior fire escape(s), acceptable to the enforcement authority, if providing enclosed interior or enclosed exterior stairs is not practical; or

4. Install approved smoke detectors or fire suppression system."

(b) "F-400.5.2 Excessive travel distances to exits:

1. Install approved interconnected smoke detectors throughout the building; or

2. Install an approved complete automatic fire suppression system; or

3. Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority; or

4. Increase the fire resistance rating of corridor walls and doors acceptable to the enforcement authority; or

5. Provide additional approved means of escape."

(c) "F-400.5.3 Unenclosed or improperly enclosed exit stairs to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected smoke detectors."

(d) "F-400.5.4 Inadequate fire separation walls or smoke barriers to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add interconnected smoke detectors."

(e) "F-400.5.5 Acceptance of Alternatives. The acceptance of any alternative(s) shall be in writing and shall be deemed to satisfy the intent of this code as it relates to the provisions for which the alternative(s) is offered as listed below:

1. Any alternative(s) specifically listed in F-400.5.1 through F-400.5.4 and complied with as set forth therein;

2. Any other alternative which is accepted or allowed by the fire code official.

(3) Create a new subsection F-400.6 to read as follows: "F-400.6 Upgrading of Existing Buildings. If, upon inspection, the fire code official finds that enforcement of this code requires alterations to a building, he shall identify the sections of this code which require correction and specify the type of correction necessary in order to achieve compliance. This decision shall be in writing to the owner or occupant and shall include a reasonable time for completion of the corrections. Failure of the owner or occupant to make the corrections described by the fire code official within the time frame specified shall be considered a violation subject to further action pursuant to F-111.2. Any party aggrieved by a decision of the fire code official may appeal in accordance with F-108.

(4) Amend subsection F-401.1 to read as follows: "F-401.1 Number of Means of Egress: Except as accepted in writing by the fire code official pursuant to Section F-101.6 or F-400.5 or as permitted in any Exception No. 1 - 4 of this section, every floor area of all

occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

500 or fewer persons - two (2) means of egress

501 - 1000 persons - three (3) means of egress

1001 or more persons - four (4) means of egress

Exception No. 1 - Living units in Use Group R-2 (apartment buildings, rooming houses and multiple single family dwelling units)

Living Units. A living unit may have a single exit if:

a. That living unit has an exit door directly to the street or yard at ground level; or

b. That living unit has direct access to an outside stair serving a maximum of two (2) units both located on the same floor; or

c. That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein; or

d. Any individual living unit below the fourth story may have an outside window openable from the inside without the use of tools or special knowledge as the second exit.

Building Exits. A building of three (3) stories or less may have a single exit under the following conditions:

a. The stairway is completely enclosed by smoke barriers; and

b. Doors protecting all openings into the stairs are approved solid wood core or steel doors with self-closing devices; and

c. The stairway does not serve more than one-half (1/2) story below the level of exit discharge; and

d. All corridors serving as access to exits are smoke resistant; and

e. There is not more than approximately thirty-five (35) feet of travel distance from the entrance door of any living unit to an exit; and

f. Three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

Fire Tower Exits. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Travel shall be on the same floor level or, if the traversing of stairs is required, stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if the exit is enclosed and serves no other levels and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within seventy-five (75) feet.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of egress shall be permitted from any story or section, if the exit can be reached within the distance allowed as common path of travel."

(5) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions[a]
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m^2.

(6) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(7) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

(a) F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

(b) F-401.3.2 Increased occupant load: The occupant load

permitted in any building or portion thereof shall be permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on the modified number. If required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. If required by the fire code official, the diagram shall be posted.

(c) F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three (3) square feet (0.28 m^2) of occupiable floor space.

(d) F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

(e) F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

(f) F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

TABLE F-401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net
Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m^2

(g) F-401.3.7 Assembly buildings: Buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. If there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

(h) F-401.3.8 Exit capacity. The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

(i) F-401.3.9 Minimum width: The width of each means of egress component shall computed in accordance with Table 401.3.1 for the required capacity of the component, but shall not be less than the minimum width as prescribed by this code for each component.

TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT

Use Group	Without fire suppression system (inches per person)[a] Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2

Use Group	With fire suppression system (inches per person)[a] Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(8) Amend subsection F-401.4 to read as follows: "F-401.4 Corridor enclosure. Corridors serving as an exit access shall be constructed of materials which provide an effective smoke barrier.

(9) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system.

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(10) Create a new subsection, F-401.6 Panic hardware, to read as follows: "F-401.6 Panic hardware: Doors equipped with latching devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with panic hardware in compliance with the Kentucky Building Code listed in Appendix A."

(11) Amend Section F-403 by deleting subsections F-403.1, F-403.2 and F-403.3 and replacing with the following new subsections:

(a) "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building

and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

(b) "F-403.1.1 Artificial lighting. Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at places and for periods of time as required to maintain the illumination to the minimum foot-candle values herein specified."

(c) "F-403.1.2 Floor lighting. The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theaters, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during periods of the performances to values not less than one-fifth foot candle."

(d) "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, shall not leave any area in darkness."

(e) "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, if all applicable requirements of this section for illumination are also met."

(f) "F-403.4 Sources of Illumination. Illumination of means of egress shall be from a source of reasonably assured reliability, such as public utility electric service."

(g) F-403.4.1 Electricity. If electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the NFiPA 70 listed in Appendix A.

(h) F-403.4.2 Battery powered. A battery operated electric light nor any type of portable lamp or lantern shall not be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-403.5.

(i) F-403.4.3 Other lighting sources. Luminescent, fluorescent, or reflective material shall not be permitted as a substitute for any of the required illumination herein specified."

(j) "F-403.5 Emergency lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: Places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes shall be exempt."

(k) "F-403.5.1 Continuity. If maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. If emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not permitted."

(l) "F-403.5.2 Duration. Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

(m) "F-403.5.3 Approved batteries. Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in lights or units shall be approved for their intended use and shall comply with the NFiPA 70, listed in Appendix A."

(n) "F-403.5.4 Power failure. An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

(o) "F-403.5.5 Automation of system. An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(12) Amend subsection F-404.4 to read as follows: "F-404.4 Single- and multiple-station smoke detectors: A minimum of one (1) approved single-station or multiple-station smoke detector shall be installed in each guestroom, suite or sleeping area in buildings of Use Group R-1 and in dwelling units in the immediate vicinity of the bedrooms in buildings of Use Groups R-2 and R-3. In buildings of Use Group R-3, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed in the upper level shall suffice for the adjacent lower level if the lower level is less than one (1) full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed on both levels. Detectors shall be installed in accordance with NFiPA 74 listed in Appendix A; except that the use of smoke detectors installed in existing occupancies prior to the effective date of this Code which are installed and maintained in operable condition according to manufacturer's instructions, may be continued without change."

(13) Amend Section F-404.5 to read as follows: "F-404.5 Manual alarms. Fire Protective Signaling Systems (manual alarms) shall be required in all buildings of Use Group E; buildings of Use Group B if three (3) or more stories in height; buildings of Use Group R-1; and buildings of Use Group R-2 if four (4) or more stories in height.

Exceptions: 1. Buildings of Use Group B less than seven (7) stories in height equipped with a complete approved automatic sprinkler system.

2. Buildings of Use Group R-1 if each guest room has exterior exit access and the building is not greater than three (3) stories in height."

(14) Create a new Section "F-407.0 Emergency Generators" to read as follows:

(a) "F-407.1 Conduct or Witness Test. The fire code official may conduct or witness a test on the complete system upon installation."

(b) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFiPA 70 listed in Appendix A."

(c) "F-407.3 Battery Systems Maintenance. If batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(d) "F-407.4 Written Record. A written record shall be kept on tests and maintenance."

(e) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(15) Create a new Section "F-408.0 Storage Room Separations" to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in quantities deemed hazardous by the fire code official in Use Groups A, B, E, R-1 and R-2 in excess of fifty (50) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating, be protected by an approved automatic fire suppression system or comply with alternatives accepted by the fire code official pursuant to Section F-400.5."

(16) Create a new Section "F-409.0 Marking of Means of Egress" to read as follows:

(a) "F-409.1 Where required. Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs.

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Marking of Signs. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Location and design of signs. Every required sign designating an exit or way of exit access shall be so located and of size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Illumination shall be continuous as required under the provisions of Section F-403.0, Illumination and Signs, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(f) F-409.6 Information signs. A sign shall be provided at each floor landing in all interior stairways more than three (3) stories above grade designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels in buildings more than seventy-five (75) feet (22860 mm) above the lowest level of fire department access shall be marked with approved signs reading as follows: Use Stairways in Case of Fire - Do Not Use Elevators."

(17) Create a new Section, "F-410.0 Special Occupancy Requirements" to read as follows:

(a) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in Chart F-410.1.1."

CHART F-410.1.1

Use group	Type of Construction Noncombustible Type 1 Protected 1A	Type 1 Protected 1B	Type 2 Protected 2A	Type 2 Protected 2B	Type 2 Unprotected 2C
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St.30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction Noncombustible/Combustible Type 3 Protected 3A	Type 3 Unprotected 3B	Type 4 Heavy Timber 4	Combustible Type 5 Protected 5A	Unprotected 5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-4 Assembly, churches	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'

NL = Not limited.

Exceptions:

1. Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.

2. Places of assembly with an occupant load in excess of fifty (50) may be located on the second story if approved by the fire code official pursuant to F-400.5.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Kentucky Building Code listed in Appendix A."

(b) "F-410.2 Educational."

1. "F-410.2.1 Corridor Width. Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Closets. Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Smoke resistance of interior corridors. Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors.

Exceptions:

1. When all classrooms served by the corridor have an exterior exit.

2. When the building has an approved automatic sprinkler system approved by the State Fire Marshal.

3. When corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Windowless rooms. Approved emergency lighting shall be installed in windowless classrooms."

(c) "F-410.3 Hotels and Dormitories." "F-410.3.1 Separation of corridors. Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel door and be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring-loaded hinges are acceptable."

(d) "F-410.4 Apartments."

1."F-410.4.1 Protection of corridors. Doors between living units and interior exit access corridors shall have a minimum twenty (20)

minute fire-resistance rating or be solid wood core or steel doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exceptions:

1. When the building has an approved sprinkler system in the corridor.

2. When there are approved interconnected smoke detectors in each corridor on every level. Detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 Doors. All doors, rated or not, between living units and corridors shall be self-closing. Self-closing devices used for this purpose shall be approved by the fire code official. Spring loaded hinges are acceptable. Exception: If accepted by the fire code official pursuant to Section F-101.6 or F-400.5."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Required means of egress. Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Kentucky Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(e) "F-410.6 Mercantile."

1. "F-410.6.1 A dwelling unit shall not have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 Dwelling unit above mercantile prohibited. A multiple dwelling occupancy shall not be located above a mercantile occupancy.

Exceptions:

1. If the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

2. If approved by the fire code official."

3. "F-410.6.3 Door swing. Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(f) "F-410.7 Business." "F-410.7.1 Limitation of dwelling unit over business use. A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction.

Exception: If approved by the fire code official."

(g) "F-410.8 Mixed Uses." "F-410.8.1 Dissimilar use groups. If a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the Kentucky Building Code listed in Appendix A."

(h) Create a new subsection to read as follows: "F-410-9 Protection from spills in laboratory or research facilities: Laboratories and research facilities storing quantities of chemicals for use in laboratory research activities shall be provided with adequate spill control equipment. This shall include absorbent materials and neutralizing agents where applicable. This material shall be maintained in a suitable storage container in the storage area. Personnel protective equipment consistent with the hazard shall be available."

(i) Create a new subsection to read as follows: "F-410.10 Fuel gas for laboratory or research facilities: Fuel gas supply piping shall be in compliance with the applicable provisions of NFiPA 45 and NFiPA 54 listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance test: Fire protection systems shall be tested in accordance with the requirements of this code and with the Kentucky Building Code listed in Appendix A. The tests shall be the responsibility of the owner or an authorized representative, and the fire code official shall be given an opportunity to be present. All tests required by this code and the standards listed in this code shall be conducted at the expense of the owner or the owner's representative."

(2) Create a new subsection to read as follows: "F-500.7 Inspections and Test Requirements: Inspections and tests required by Sections F-503.0, F-504.0, F-505.0, F-506.0, F-507.0, F-508.0, F-509.0, F-511.0, F-512.0, F-514.0 and F-515.0 shall be conducted only by persons authorized or certified by the State Fire Marshal's Office and shall be recorded on forms approved by the State Fire Marshal's Office. Copies of the forms shall be sent to the State Fire Marshal upon request."

(3) Amend subsection F-508.3 to read as follows: "F-508-3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(4) Amend subsection F-509.3 to read as follows. "F-509.3 Fusible link maintenance: Fixed temperature-sensing elements shall be maintained to assure proper operation of the system as specified by the manufacturer."

(5) Amend subsection F-511.1 to read as follows: "F-511.1 Periodic testing and inspection: All fire protective signaling systems shall be maintained in accordance with NFiPA 71 and 72 listed in Appendix A and shall be periodically inspected and tested in accordance with Sections F-511.2 through F-511.3.

Exception: Manual fire alarm systems under F-519.1."

(6) Amend subsection F-511.2 to read as follows: "F-511.2 System test: Complete and satisfactory tests shall be made of all devices in accordance with the following:

1. At twelve (12) month intervals: all transmitters and circuit interfaces.

2. At twelve (12) month intervals: functional and operation testing of the voice/alarm signaling system and water-flow-actuated devices. For sprinkler water-flow alarm tests, an actual water flow, through the use of a test connection, shall be the method employed for testing the reliability of the sprinkler alarm unit as a whole.

3. At twelve (12) month intervals: gate valve supervisory switches, manual fire alarm boxes, combination night guard and fire alarm boxes, tank water level devices, building and tank water-temperature supervisory devices, and other sprinkler system supervisory devices.

4. At twelve (12) month intervals: remote annunciators, audible and visible alarm-indicating appliances, two (2) way telephones for the fire service, primary and secondary power supplies and all control panel functions.

5. Inspection and test of automatic fire detection devices shall be in accordance with Section 512.0."

(7) Amend subsection F-512.1 and create an exception to read as follows: "F-512.1 Periodic testing and inspection: All automatic fire detection systems shall be maintained in accordance with NFiPA 72E listed in Appendix A and periodically inspected and tested in accordance with Sections F-512.2 through F-512.10.

(8) Amend subsection F-512.4 to read as follows: "F-512.4 Restorable heat detectors: For restorable heat detectors, one (1) or more detectors on each signal-initiating circuit shall be tested at twelve (12) month intervals and different detectors shall be selected for each test. Within five (5) years, each detector shall have been tested. Exception: Pneumatic line-type heat detectors."

(9) Amend subsection F-512.5 to read as follows: "F-512.5 Pneumatic line-type heat detectors: All pneumatic line-type heat detectors shall be tested for leaks and proper operation at twelve (12) month intervals."

(10) Amend subsection F-512.6 to read as follows: "F-512.6 Nonrestorable line-type fixed-temperature heat detectors: Nonrestorable line-type fixed-temperature heat detectors shall be tested for alarm function at twelve (12) month intervals. The loop resistance

shall be measured, recorded and compared with the loop resistance previously recorded. Any change in loop resistance shall be investigated."

(11) Amend subsection F-512.8, Smoke detector sensitivity, to read as follows: "F-512.8.1 Sensitivity testing: Smoke detection systems installed after December 31, 1992, shall be checked for sensitivity within one (1) year of installation and at two (2) year intervals thereafter. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be tested using either:

1. A calibrated test method; or
2. The manufacturer's calibrated sensitivity test instrument; or
3. Listed control equipment arranged for that purpose; or
4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or
5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(12) Create subsection F-512.8.2 to read as follows: "F-512.8.2 Installations prior to January 1, 1993: Smoke detection systems installed prior to January 1, 1993, in occupancies, with the exception of use Group E having no overnight sleeping quarters, shall be tested for sensitivity as follows: One (1) smoke detector or ten (10) percent, whichever is greater, on each defined zone shall be sensitivity tested at two (2) year intervals. For each detector the fails, two (2) additional detectors on the same zone shall be tested until a zero failure rate is attained on that zone. Detectors with abnormal sensitivity shall be cleaned and recalibrated or replaced. To determine that sensitivity is within the listed and marked sensitivity range, the detector shall be tested using either:

1. A calibrated test method; or
2. The manufacturer's calibrated sensitivity test instrument; or
3. Listed control equipment arranged for that purpose; or
4. A smoke detector/control unit arranged whereby the detector causes a signal at a control unit when its sensitivity is outside its acceptable test range; or
5. Other calibrated sensitivity test method acceptable to the State Fire Marshal."

(13) Create subsection F-512.8.3 to read as follows: "F-512.8.3 Nontestable systems: There is a large population of installed smoke detectors that were manufactured in compliance with previous product standards that did not require a means for testing sensitivity within an acceptable listed range. It is the intent of this code that these detectors shall not be tested against current product standards."

(14) Amend subsection F-512.10 to read as follows: "F-512.10 Flame detectors, fire-gas detectors and other fire detectors: All flame detectors, fire-gas detectors and other fire detectors shall be tested in a manner acceptable to the manufacturer at twelve (12) month intervals.

(15) Amend the Exception in F-513.2 to read as follows: "Exception: The written log of tests as specified in Section F-504.1 shall not be required in buildings of Use Group R-2 or R-3."

(16) Create a new "Section F-518.0 Commercial Kitchen Exhaust" to read as follows: "F-518.1 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(17) Create a new "Section F-519.0 Manual Fire Alarm Systems" to read as follows: "F-519.1 Manual fire alarm systems inspection: Manual fire alarm systems within all buildings shall be checked monthly by the owner or owner's representatives. The use of the system for fire drill purposes shall be accepted as a test of only those parts of the system actually used in the drill procedure. Accurate logs shall be maintained on the premises indicating box number, location, data and type of device tested. Any defect, modification or repair shall be logged, and the log shall be available to the fire department."

Section 8. Article 6 is hereby adopted in its entirety and a new subsection created to read as follows: "F-602.4 Closing: All fire doors shall comply with Section F-311.0."

Section 9. Article 7. (1) Create a new subsection, "F-700.2 Fire Exit Drills" to read as follows:

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by this code, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership under the supervision of the owner-operator or administrator."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the fire code official."

(2) Amend subsection F-701.1 to read as follows: "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in effecting orderly exit of assemblages."

(3) Amend subsection F-701.2 to read as follows: "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the fire code official."

(4) Amend subsection F-701.3 to read as follows: "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300 or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools if used for nonpublic events."

(5) Amend subsection F-701.4 to read as follows: "F-701.4 Open Flame Devices. Open flame devices shall not be used in any assembly occupancy.

Exceptions:

1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under

restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

2. Open flame devices may be used on stages when a necessary part of theatrical performances, if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

3. Gas lights may be permitted if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

4. Candles may be used on tables if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

5. As permitted in F-701.5."

(6) Create new subsection F-701.5 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fueled by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used if adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted if necessary precautions are taken and subject to the approval of the fire code official.

(7) Create a new subsection "F-701.6 Smoking" to read as follows:

(a) "F-701.6.1 For purposes of abatement of fire, smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

(b) "F-701.6.2 In rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

(c) "F-701.6.3 A person shall not smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

(d) "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall conform to the requirements of F-312.6."

(8) Create a new subsection "F-701.7 Furnishings, Decorations, and Stage Scenery" to read as follows:

(a) "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

(b) "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

(c) "F-701.7.3 There shall be no exposed foamed plastics."

(9) Create a new subsection "F-701.8 Coat Racks" to read as follows: "F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(10) Create a new subsection F-701.9 to read as follows: "F-701.9 Unvented fuel fired heaters shall not be used in assembly occupancies."

(11) Amend Section F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

(a) "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

(b) "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

(c) "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or other members of the staff. If the teachers are to search, it shall be done after they have led their classes to the preceding lines."

(d) "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to obtain clothing after the alarm is sounded, even if in home rooms, due to the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

(e) "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. These points shall be sufficiently far away from the building and from each other to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

(f) "F-702.1.6 If it is necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic during the period of the drill."

(g) "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(12) Amend subsection F-702.3 to read as follows: "F-702.3 Records: A record of fire exit drills shall be kept on the premises and persons in charge of these occupancies shall, upon request, file written reports with the code official, giving the following information:

1. Time of drill.
2. Date of drill.
3. Weather conditions when occupants were evacuated.
4. Number of occupants evacuated.
5. Total time for evacuation.
6. Other information relevant to the drill.

(13) Create a new subsection "F-702.5 Fire Alarm Signals" to read as follows:

(a) "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

(b) "F-702.5.2 If the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or other facilities as are available."

(c) "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. These signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall

at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

(d) "F-702.5.4 Inspection."

(e) "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

(f) "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(14) Delete Section F-703, F-704 and F-705 in their entirety.

(15) Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel and Motel Emergency Organization."

1. "F-707.1.1 Hotel and Motel Employee Duties. Employees of hotels and motels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Monthly drills. Drills of the emergency organization shall be held at monthly intervals, covering the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

3. "F-707.1.3 Emergency Duties in Hotels, Motels and Dormitories. The owner or other person in control of the premises shall take immediate action to control any fire on the premises. Upon discovery of fire, some or all of these duties will become immediately imperative, the number and sequence depending upon the exact situation encountered:

Alarms

Notify office.

Notify public fire department.

Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.

Assist occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons.

Search rooms to be sure all occupants have escaped.

Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.

Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.

Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.

Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.

Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.

Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(b) "F-707.2 Dormitory Drills." "F-707.2.1 Fire exit drills shall be conducted quarterly in accordance with F-701.0."

(c) "F-707.3 Emergency instructions for Residents or Guests of Hotels, Motels or Dormitories."

1. "F-707.3.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.3.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(d) "F-707.4 Emergency Instructions for Residents of Apartment Buildings." "F-707.4.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(e) "F-707.5 Furnishings and Decorations." "F-707.5.1 New draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-306.0."

(f) "F-707.6 Unvented fuel-fired heaters shall not be used in residential occupancies. Exception: Listed and approved unvented fuel-fired heaters **may be used** in one (1) and two (2) family dwellings."

(g) "F-707.7 Gas Grills on balconies of multifamily dwellings." "F-707.7.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily dwelling of three (3) or more living units located one (1) above the other. (See NFiPA 58 listed in Appendix A)"

(16) Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 Training. In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Fire extinguishers. Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(17) Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 **persons** above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures and shall hold practice drills periodically where practicable."

(b) F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

Section 10. Article 8 is adopted in its entirety.

Section 11. Article 9. Amend subsection F-901.1 to read as follows: "F-901.1 General: The layout, arrangement and construction of buildings and structures in which spraying or dipping operations are done shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. If provisions of this article do not specifically cover conditions and operations, buildings and structures and their service equipment shall be maintained in proper operating condition as required by this code and NFiPA 33 and 34 listed in Appendix A."

Section 12. Article 10 is adopted in its entirety.

Section 13. Article 11. Amend subsection F-1101.1 to read as follows: "F-1101.1 General: The layout, arrangement and construction of buildings and structures in which the process of ripening or coloring of crops is conducted shall comply with the applicable requirements of the Kentucky Building Code listed in Appendix A for the appropriate use group classification, and shall be provided with fire protection and fire protection systems as required by that code. Buildings and structures and their service equipment shall be maintained in a safe and sound condition as required by that code."

Section 14. Articles 12 through 15 are adopted in their entirety.

Section 15. Article 16. (1) Delete subsections F-1600.1 through F-1602.2 from Article 16 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(2) Create a new subsection, F-1603.3, to read as follows: "F-1603.3 Storage and handling: The storage and handling of all flammable and combustible liquids at gas or oil wells and related production facilities shall comply with the requirements of NFiPA 30 referenced in Appendix A."

Section 16. Article 17. (1) Delete subsection F-1700.2 in its entirety.

(2) Amend subsection F-1703.2, Doors, to read as follows: "F-1703.2 Doors: All doors in buildings of use Group A and E or portions of buildings used for assembly shall comply with the requirements set forth in subsection F-401.6 and subsection F-602.0. Panic release devices shall not be required in Use Groups A-3 and A-4 if the principal entrance/exit doors are free-swinging and swing in the direction of exit travel."

Section 17. Article 18 is adopted in its entirety and a new subsection shall be created to read as follows: "F-1800.3 Operation and maintenance: All devices and systems required by Section 603 of the Kentucky Building Code listed in Appendix A shall be maintained in an operable condition."

Section 19. Articles 19 through 26 are adopted in their entirety.

Section 20. Article 27. (1) Amend Subsection F-2700.1 to read: ""F-2700.1 Scope: See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 21. Article 28. (1) Amend Subsection F-2800.3 and create paragraphs F-2800.3.1 through F-2800.3.2 to read as follows:

(a) "F-2800.3 Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(b) "F-2800.3.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

5. Permits shall not be required for the storage and handling of crude oil on oil and gas leases."

6. Nothing in this Article shall require compliance by those oil and gas facilities regulated pursuant to KRS Chapter 353.

(c) "F-2800.3.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of the Kentucky Building Code."

(2) Create a new subsection, F-2800.4.2 Inspection, to read as follows: "F-2800.4.2 Inspection: Prior to covering or concealing any work, the State Fire Marshal's Office shall be notified when the installation is ready for inspection. The State Fire Marshal may require covered or concealed work to be exposed, if necessary, to determine code compliance."

(3) **Amend subsection F-2803.8 by creating an exception to read as follows: "Exception: Self-service stations in which the design and operation of the equipment requires the use of both a personal identification number and a magnetic access card, or an equivalently limited access method approved by the State Fire Marshal.**

(4) Create a new subsection, F-2804.3.3, to read as follows: "F-2804.3.3 Intercommunication System: In self-service stations, an effective two (2) way intercommunication system between the control stand and each pump island shall be installed. **Exception: Installation of an intercommunication system shall not be required for approved unattended stations.**"

(5) [~~(4)~~] Create a new subsection, F-2805.5, to read as follows: "F-2805.5 Prohibited Uses: Flammable and combustible liquid storage tanks designed for underground use shall not be installed aboveground unless the manufacturer also specifies that the tank is suitable for aboveground use."

(6) [~~(5)~~] Create a new subsection, F-2806.5.1, to read as follows: "F-2806.5.1 Electrical Conduit: Electrical conduit shall be separated from underground storage tanks or piping systems by at least six (6) inches (152 mm)."

(7) [~~(6)~~] Create a new subsection, F-2806.9.1, to read as follows: "F-2806.9.1 New Underground Installations: During backfill and paving operations, the contractor shall monitor new underground installations for leaks by means of pressure, water or vacuum testing as appropriate to the type of system."

(8) [~~(7)~~] Create subsection F-2806.10.2.1 to read as follows: "F-2806.10.2.1 Overfill method: The underground storage tank shall be filled to its maximum capacity in conducting precision tests for the following:

1. Alterations or the breaking of any connections located at the top of the tank; and

2. To determine the location of a suspected leak as determined by the code official."

(9) [~~(8)~~] Create a new subsection, F-2806.10.3, to read as follows: "F-2806.10.3 Failed Tests: An underground storage tank or piping system which fails a test required by F-2806.10.2.1 shall be promptly reported to the State Fire Marshal's Office."

(10) [~~(9)~~] Create a new subsection, F-2806.10.4, to read as follows: "F-2806.10.4 Pump Leak Protection: In new construction, new systems and upgrades, a positive shut-off valve shall be installed between the piping system and the leak detector on the discharge side of the pump."

Section 22. Article 29 is adopted in its entirety with the following subsection amended to read as follows: "F-2901.2 Identification: All containers shall be labeled or placarded in accordance with DOT 49 CFR listed in Appendix A."

Section 23. Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.3 to read as follows:

(a) "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(b) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(c) "F-3000.2.2 The construction or substantial remodeling of any

plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

(d) "F-3000.2.3 Any permanent (Stationary) tank installation utilizing storage containers of over 2,000 gallons (7.6 m^3) individual water capacity or with aggregate water capacity exceeding 4,000 gallons (15.1 m^3)."

(2) Amend subsection F-3001.1 to read as follows: "F-3001.1 Above ground: All above-ground tank container systems shall be located with respect to the nearest important building, group of buildings or line of adjoining property as specified in Table F-3001.1."

(3) Amend subsection F-3005.2 by adding the following exception: "Exception: Compressed natural gas (CNG) self-service units may be installed and used at public service stations under the following conditions:

1. A permit for the installation shall be obtained from the State Fire Marshal; and

2. The installation and operation shall comply with NFiPA 52 listed in Appendix A; and

3. The installation shall be designed and operated to be accessible only to fleet vehicles and by persons who have been trained in dispensing the product; i.e., equipment requires **the** use of **both** a personal identification number **and a magnetic access card, or an equivalently limited access method approved by the State Fire Marshal** [~~or a CNG card~~] to operate."

(4) Amend subsection F-3005.0 by creating the following new subsection to read as follows: "F-3005.4 Compressed natural gas (CNG) operations: A person shall not operate a CNG dispenser at a public service station unless the person has been trained in the operation of the dispenser under the criteria described in NFiPA 52 listed in Appendix A."

Section 24. Articles 31 through 34 are adopted in their entirety unchanged.

Section 25. Appendix A is adopted in its entirety, with the following amendments:

(1) Add the following NFiPA Pamphlet Editions:

"13R-91 Sprinkler Systems in Residential Occupancies Up to Four (4) Stories in Height
45-91 Fire Protection for Laboratories Using Chemicals
72-90 Installation, Maintenance and use of Protective Signaling Systems
231-90 General Storage
231C-86 Rack Storage of Materials
231D-89 Storage of Rubber Tires
231F-87 Storage of Rolled Paper
1123-90 Outdoor Display of Fireworks
1124-88 Manufacturer, Transportation and Storage of Fireworks"

(2) Add the following reference: "The Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky Administrative Regulations."

(3) Amend the Edition dates for the following ASTM references: "D86-90"; "D93-90"; "D323-90"; and "E84-91".

(4) Amend the Edition date for the following API reference: "12B-90".

(5) Amend the Edition date for the following ASME reference: "A17.1-90".

(6) Amend the Edition date for the following STI reference: "STIstiP3-90".

(7) Amend the Edition date for the following UL reference: "443-90".

(8) Amend the Edition date to "1990" for the following NFiPA references: "10; 12B; 14; 15; 17; 17A; 20; 30; 30A; 32; 46; 50; 59A; 72E; 80; 91; 99; 303; 385; 407; 495 and 704."

(9) Amend the Edition date to "1991" for the following NFiPA reference; "13; 16; 88B; and 801".

(10) Amend the Edition date to "1992" for the following NFiPA reference: "#58[~~; and #70~~]".

(11) Amend the Edition date to "1993" for the following NFiPA reference: "#70".

(12) [~~(11)~~] Delete the following NFiPA references: "72A; 72B; 72C; 72D; and 72F".

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 10, 1993
FILED WITH LRC: March 10, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

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

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

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

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

(e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); **and**

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver**, as provided for in 42 USC 1396r(b)(4)(C)(ii),** unless the context

specifies otherwise.

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

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

(6) "Nursing services costs" **means** [~~are~~] the direct costs associated with nursing services.

(7) "All other costs" **means** [~~are~~] other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

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

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

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

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

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

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

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

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

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes **shall be** [~~are~~] allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

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

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

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

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

(17) "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, **cannot participate** [~~is prohibited from participation~~] in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program.

(4) The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

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

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

Section 4. Implementation of the Payment System. The cabinet's reimbursement system **shall be** [~~is~~] supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The cabinet's reimburse-

ment system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section **of the administrative regulation**, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet.

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;

2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or

3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed.

2. Appropriate cost report adjustments **shall** ~~will~~ be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.

3. ~~(~~]Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.~~)~~

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. ~~(~~(a)~~)~~ Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA).

b. The rural array shall include all facilities in non-SMSA counties.

c. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

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

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

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

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

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

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

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

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

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

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

4. ~~(~~(d)~~)~~ Other factors relating to costs and upper limit determination **shall be:**

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

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

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

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

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

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

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

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

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

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

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

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. [~~"Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.~~] Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

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

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

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

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

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

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

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

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

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

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

(a) **An** [~~No~~] increase shall **not** be allowed in capital costs;

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

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

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

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

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

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

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

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

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

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

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

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

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

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

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

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

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet.

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing [~~skilled~~] nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI).

(a) Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

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

(Effective 10-1-90)

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

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

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

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

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a)1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight).

2. The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) [~~No~~] Interim rate adjustments for nursing home reform shall **not** be allowed for periods after June 30, 1993.

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

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbu rsement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

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

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner.

(a) This request shall [~~must~~] be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations.

(b) The [~~Such~~] panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with the [~~such~~] designated member to act as chairperson of the review panel.

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

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

(e) In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances in order to provide for equitable treatment and reimbursement of the provider.

(f) The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

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

JANIE A. MILLER Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: March 10, 1993
FILED WITH LRC: March 10, 1993 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 15, 1993

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, Acts 1992, c. 462, Part III, Section 16, p. 2045

STATUTORY AUTHORITY: KRS 16.576, 16.640, 61.559, 61.645, 78.780

NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545 require the Board of Trustees of Kentucky Retirement Systems to determine the employer contribution rate based on an actuarial valuation. On November 21, 1991, the Board of Trustees of Kentucky Retirement Systems accepted the results of an actuarial valuation and adopted an employer contribution rate of 8.66% for the Kentucky Employees Retirement System (KERS) nonhazardous employees and 17.55% for hazardous duty employees; adopted an employer contribution rate of 8.82% for the County Employees Retirement System (CERS) nonhazardous employees and 18.47% for hazardous duty employees; and adopted an employer contribution rate of 21.84% for the State Police Retirement System (SPRS). The Acts 1992, c. 462, Part III, Section 16, p. 2045, provides that, notwithstanding KRS 61.565, it is the intent of the General Assembly that from July 1, 1992 through June 30, 1994 the employer contribution rate for the KERS shall be no more than 7.65% for nonhazardous duty employees and 15.05% for hazardous duty employees; and for the same period the employer contribution for employees of the SPRS shall be no more than 19.57%. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the KERS, CERS and SPRS. The Board of Trustees of Kentucky Retirement Systems perceives a conflict between KRS 61.565 and Acts 1992, c. 462, Part III, Section 16, p. 2045. This regulation establishes the employer contribution rates in a manner consistent with the provisions of KRS 61.565, which the Board of Trustees of Kentucky Retirement Systems feels compelled to follow until such time as the conflict is resolved. A copy of the opinion upon which this decision was based is attached.

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation effective July 1, 1993 [~~1992~~] shall be as follows:

KRS 61.565	State Police Retirement System - 21.84%	
KRS 61.565	Kentucky Employees Retirement System - 8.66%	
KRS 61.565	County Employees Retirement System - 8.82%	
KRS 61.592	Kentucky Employees Retirement System -	17.86% [~~17.55%~~]
KRS 61.592	County Employees Retirement System -	18.49% [~~18.47%~~]

Section 2. Effective July 15, 1988, the interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:

(1) For time elapsed from date of refund eight (8) percent compounded annually.

(2) The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board or by court order or by order of the Human Rights Commission shall be at the rate of zero percent, if the refund is recontributed within a reasonable period of time.

Section 3. The legal rate of interest as referenced in Section 7 of regulation 200 KAR 12:010 (a regulation relating to computing back pay after reinstatement) shall be the actuarial assumed interest rate set forth in Section 1 of 105 KAR 1:040.

Section 4. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate between two and one-half (2 1/2) percent and six (6) percent as determined by the board.

Section 5. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, unless the provisions of subsections (1) through (5) of this section are applicable and result in a higher percentage payable:

(1) A SPRS, CERS Hazardous or KERS Hazardous duty member who is age fifty (50) or older and would attain twenty (20) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factors as follows:

TABLE A

Years Required to Complete 20 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A KERS or CERS nonhazardous member who is age fifty-five (55) or older and would attain twenty-seven (27) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE B

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(3) A KERS or CERS nonhazardous member who dies prior to

age fifty-five (55) or who retires prior to age fifty-five (55) with twenty-five (25) or more years of service (at least fifteen (15) of which are current service) shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%

(4) A KERS or CERS nonhazardous member with less than twenty-five (25) years of service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on TRS, SPRS, CERS Hazardous or KERS Hazardous Early retirement eligibility, and would have attained twenty-seven (27) or more years of service (fifteen (15) of which would be current service) on or before reaching his 65th birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table B based on the number of years required to complete twenty-seven (27) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A SPRS, CERS Hazardous or KERS Hazardous member who dies prior to age fifty (50) and would have attained twenty (20) or more years of service (fifteen (15) of which would be current service) on or before reaching his 55th birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty (20) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

TABLE E

Years Required to Complete 20 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age 65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to

determine the appropriate factors.

(6)(a) Benefits paid in the event of death prior to retirement pursuant to subsection (1) through (5) of this section, shall be: determined by "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors"; and (2) reduced as required by KRS 61.640.

(b) "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors", effective July 14, 1990 are incorporated by reference in this administrative regulation. These factors may be read or copied at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

Section 6. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: March 9, 1993

FILED WITH LRC: March 11, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1993 at 10 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 April 16, 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: 1,365 state and local government agencies.

(a) Direct and indirect costs or savings to those affected:

1. First Year: KERS nonhazardous - 0.0% - $0*; KERS hazardous - .31% - $210,373*; CERS nonhazardous - 0.0% - $0; CERS hazardous - .02% - $27,976; SPRS - 0.0% - $0*.

*The estimated costs are based on the rates adopted by the Board of Trustees of the Kentucky Retirement Systems in accordance with KRS 61.565 and previously established by this administrative regulation. The agencies participating in the County Employees Retirement System are paying the rates established by the Board of Trustees. State agencies are paying rates set out in the Biennial Budget.

2. Continuing costs or savings: The employer contribution rates are determined each year in accordance with KRS 61.565.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There is no change to reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is no effect on the promulgating body.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no change to reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation will require an additional 0.02% from CERS hazardous employers. The average increase is less than $5.50 per year for each hazardous duty employee. The increase for KERS hazardous employers is approximately $65 per year per employee over the rates previously established by this administrative regulation.

(4) Assessment of alternate methods; reasons why alternatives were rejected: The funding method and determination of the contribution rate are set forth in KRS 61.565. The Board of Trustees has no alternative method under state statutes.

(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: This regulation conflicts with the contribution rates set out in the Biennial Budget. The Board of Trustees, based on the opinion attached to this regulation, believe it is their fiduciary duty to set the employer contribution rates in accordance with KRS 61.565 until any conflict between that section and the Biennial Budget is resolved.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The conflict could not be harmonized as noted in the previous statement.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The contribution rates are tiered to reflect the costs and assumptions of the five groups within the three retirement systems administered by the Kentucky Retirement Systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects all local government agencies participating in the County Employees Retirement System which have employees covered under the provisions of KRS 61.592 (hazardous duty).

3. State the aspect or service of local government to which this administrative regulation relates. This regulation sets the employer contribution rate in accordance with KRS 61.565 to fund the retirement benefits of full-time employees.

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 (+/-): Hazardous employees - .02% of payroll - $27,976.

Other Explanation: This increase in the contribution rate for CERS hazardous employees is required under KRS 61.565 to fund retirement benefits. The actuarial valuation of the systems indicated a slight increase in the cost of benefits above the amount funded through the current contribution rates.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:170. Membership form requirements.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement

System to file information with the Board of Trustees as a condition of membership. This regulation establishes the information required for membership.

Section 1. An employee eligible for participation on the date his agency first participates shall complete an Election or Rejection Form, Form 2, dated July 1991, designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a Membership Form, Form 1, dated December 1989. The membership form shall be kept on file in the retirement office.

Section 3. The employee may also complete a Beneficiary Designation Form, Form 35, dated December 1992 [~~July 1991~~] which shall be sent to the retirement office. If a designation of beneficiary form is not completed, if no beneficiary is named or if an improper beneficiary is named, the member's estate shall be the beneficiary until the member files a different designation with the retirement system.

Section 4. (1) If the employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee and the Simultaneous Employment Choice of Systems Form, Form 26, dated February 1991, necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 6. Pursuant to KRS 61.625 [~~Upon termination of employment~~], an employee who is not vested for monthly benefits may request a refund of his account by completing and returning an Application for Refund, Form 25, dated December 1992 [~~July 1989~~].

Section 5. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: February 18, 1993

FILED WITH LRC: February 24, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 23, 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 committee in writing by April 18, 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: Pamala S. Johnson, Kentucky Retirement systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact person: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment only applies to members of the Kentucky Employees Retirement System, County Employees Retirement System and State Police 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 state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed amendment includes replacement of two forms. The Form 25 is amended to reflect changes in federal tax withholding on refunds and the Form 35 is redesigned to make it easier to complete.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. This administrative regulation establishes the forms used by all members of the 3 retirement systems.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:031. Therapist's licensing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to define clearly the procedure for issuing licenses. This administrative regulation standardizes the administrative procedures involved in granting a physical therapy license through the various

means of qualifying.

Section 1. Any candidate for licensure by examination shall first satisfy all application requirements, including payment of applicable fees. The initial application fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of forty-seven (47) dollars and fifty (50) cents shall be paid by the applicant for reexamination or for an examination which was obtained by the board upon application by a candidate but was not [~~used or~~] completed by the candidate. Upon approval as a candidate by the board, the candidate for licensure by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board.

(1) The board shall administer the National Physical Therapy Examination (NPTE) [~~Assessment Systems, Incorporated (ASI) examination~~] to those candidates permitted to sit for the examination. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE [~~ASI examination~~].

(2) An examination candidate may make a written request to the board to be granted a one (1) time exemption from taking their scheduled examination due to an undue hardship. If the request is granted, the candidate may continue to practice until the next regularly scheduled examination.

Section 2. If an applicant becomes a candidate for licensure by examination before forty-five (45) days preceding the date that the next examination is to be held and credentials of the applicant are in order, fees submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received by the candidate, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first.

Section 3. A temporary permit requires that the physical therapist applicant shall work only under the supervision of a physical therapist licensed and practicing in Kentucky. Supervision requires the responsible therapist to be available and accessible by telecommunications at all times during the working hours of the person with a temporary permit. The supervising therapist shall be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit including cosigning all evaluations and physical therapy recordings within fourteen (14) days. The date of the record review shall be noted. The board may issue a temporary permit only to:

(1) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.

(2) Foreign-trained physical therapist applicants who have met all requirements for licensure application and paid all fees provided for in KRS 327.060(2), except that the applicant has not yet taken the NPTE [~~ASI examination~~] or has not yet begun or completed one (1) year of board approved, supervised employment as a physical therapist.

(3) Graduates who have been accepted as a candidate [~~applied~~] for licensure by [~~ASI~~] examination in another state and who have met all requirements for Kentucky application but who have not yet taken or been notified of the results of that examination.

Section 4. The following candidates are not eligible to practice as a physical therapist in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(1) A person who has failed the NPTE [~~ASI examination~~] in this or another state or country.

(2) A person who had qualified as an examination candidate but who did not sit for or complete the scheduled examination; and

(3) An endorsement candidate whose NPTE scores [~~PES or ASI examination results~~] do not meet Kentucky's requirements.

Section 5. Candidates examined by boards of other states and territories [~~before July 7, 1989~~] shall have registered [~~their PES scores~~] with the Interstate Reporting Service of the Professional Examination Service[~~. Candidates examined in another jurisdiction after July 7, 1989 shall arrange with the Professional Reporting Service (PRS) of Assessment Systems, Incorporated~~] to have their examination results submitted to the board. [~~The applicable service shall furnish the candidate's examination results to the board, to include for each part and the total examination:~~

~~(1) The number of questions asked;~~

~~(2) The number of questions answered correctly;~~

~~(3) The national average raw score; and~~

~~(4) The converted score, calculated using a minus one and five tenths (-1.5) standard deviation below the national average raw score.~~]

Section 6. The candidate for licensure by endorsement shall submit the regular license application form[~~, shall arrange to have submitted proper evidence that he has been examined by the PES or ASI~~] and pay the application fee established in 201 KAR 22:135. The Kentucky State Board of Physical Therapy shall endorse a candidate who has taken the NPTE prepared [~~been examined~~] before July 7, 1989 or beginning in 1993 by the Professional Examination Service, or between November 1989 and December 1992 [~~after that date,~~] by Assessment Systems, Incorporated, [~~and~~] whose score meets the board's requirements [~~of national average raw score minus one and five tenths (1.5) standards deviation set equal to a converted score of seventy five (75) on the total examination,~~] and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state. To be considered for licensure, a person examined prior to July 1, 1993 shall have achieved a score on the NPTE at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600. Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE [~~PES or ASI examination~~].

Section 7. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon requesting reinstatement, furnishing all information required of a license renewal applicant in 201 KAR 22:040, payment of the reinstatement fee established in 201 KAR 22:135. Therapists who have not been licensed for three (3) years shall, in addition, be required to show evidence of professional competency, and provide verification that any license to practice in another state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate will be at the board's discretion after evaluation of said evidence.

Section 8. A license, which shall be in effect until March 31st of the next uneven numbered year shall be issued by the board when it receives notice from the Professional Examination Service [~~Assessment Systems, Incorporated~~] that the candidate by examination has received a passing grade which shall be set based on the criterion referenced passing point set equal to a scaled score of 600 [~~national raw average score minus one and five tenths (1.5) standard deviation set equal to a converted score of seventy five (75) on the total examination~~], and when candidates by endorsement and foreign trained candidates have met all requirements.

Section 9. The executive secretary of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

GEORGIA KING, Chairman
APPROVED BY AGENCY: February 19, 1993
FILED WITH LRC: March 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1993 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Ms. Nancy Brinly, Executive Secretary, State Board of Physical Therapy, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215, (502)595-4687.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Brinly
(1) Type and number of entities affected: Possibly more than 190 applicants for Kentucky physical therapist licensure per year.
(a) Direct and indirect costs or savings to those affected: No cost factors except for a person failing the examination.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: No changes for agency.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The ability to change from a "statistical" or norm referenced, to the defensible "performance" or criterion referenced approach to examination scoring has long been sought by physical therapy licensure boards. The passing score on the test will be set relative to the difficulty level of test items and the ability of "minimally competent" candidates. Separation of "competent" and "incompetent" candidates are then distributed on performance rather than on statistical standards.
TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:106. Assistant's certification procedure.

RELATES TO: KRS 327.040
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: Because certification may be achieved in several ways, this administrative regulation defines the types of candidates, and procedure for making application to the State Board of Physical Therapy as a candidate for certification as a physical therapist's assistant.

Section 1. The fee for application for certification by examination is established in 201 KAR 22:135. Upon approval as a candidate by the board, the candidate for certification by examination shall be notified of the date, place and time of the examination to be held at the time and location set by the board. The board shall administer the National Physical Therapy Examination (NPTE) [~~Assessment Systems, Incorporated (ASI) examination~~]. Other examinations as determined by the board may be administered in lieu of, or in addition to, the NPTE [~~ASI examination~~] to those qualified candidates permitted to sit for the examination.

Section 2. If an applicant becomes a candidate for certification by examination before forty-five (45) days preceding the date that the next examination is to be held and [~~, the~~] credentials of the applicant are in order, correct fee submitted and the board is in receipt of a completed supervisory agreement statement, then a temporary permit shall be issued to be in force until the results of that examination are received, processed, and the candidate has been notified of the results, or until the regularly scheduled renewal date of all licenses to practice, March 31 of each uneven numbered year, whichever comes first. A temporary permit requires that the physical therapist's assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky who shall cosign and date all of the physical therapist's assistant's physical therapy patient records within seven (7) days of the recording. The board may issue a temporary permit to:
(1) Graduates who have applied for certification by examination, have met all requirements and are sitting for the next examination or who have taken that examination and have not yet been notified of the results.
(2) Graduates who have been accepted as a candidate [~~applied~~] for certification by NPTE [~~ASI examination or other examinations approved by the board~~] in another state and who have met all requirements for Kentucky application, and are sitting for the next examination, or who have taken the examination but [~~who~~] have not yet been notified of the results [~~of that examination~~].

Section 3. (1) The following candidates are not eligible to practice as a physical therapist's assistant in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:
(a) [~~(1)~~] A person who has failed the NPTE [~~ASI examination~~] in this or another state or country.
(b) [~~(2)~~] A person who had qualified as an examination candidate but who failed to take or complete the scheduled examination; and
(c) [~~(3)~~] An endorsement candidate whose NPTE [~~PES or ASI examination~~] results do not meet Kentucky's requirements.
(2) An examination candidate may make a written request to the board to be granted one (1) time exemption from taking the scheduled examination without loss of practice privileges. The board shall consider requests which document undue hardship.
(3) To be examined, or reexamined in Kentucky, any candidate listed above must have applied for certification by examination and

have met all application requirements, including payment of the applicable fee. The original application fee covers the first scheduled examination. The cost of the examination to the board plus an administrative fee of forty-seven (47) dollars and fifty (50) cents shall be paid by the applicant for reexamination or for an examination [~~not taken or~~] not completed.

Section 4. Candidates examined by boards of other states or territories [~~before July 7, 1989~~] shall have registered [~~their PES scores~~] with the Interstate Reporting Service of the Professional Examination Service[~~. Candidates examined by another jurisdiction after July 7, 1989 shall arrange with the Professional Reporting Service (PRS) of Assessment Systems, Incorporated~~] to have their examination results submitted to the board. [~~The applicable service shall then calculate the applicant's scores to meet Kentucky board requirements and submit the same to this board for consideration of certification.~~]

Section 5. The candidate for certification by endorsement shall submit [~~use~~] the regular application form. The Kentucky State Board of Physical Therapy shall endorse a candidate who has paid an application fee proper for the period within the biennial licensure term in which he is applying, has taken the NPTE prepared before July 7, 1989 and beginning in 1993 [~~been examined~~] by the Professional Examination Service (PES) or between November 1989 and December 1992 by Assessment Systems, Incorporated (ASI), has achieved an examination score which meets the Kentucky board's requirements, [~~of the national raw average score minus one and five tenths (1.5) standard deviation set equal to a converted score of seventy five (75),~~] and has never had a physical therapist's assistant certificate revoked or suspended or whose certificate is currently not on probation or under disciplinary review in another state. A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600. The application fee, which shall be submitted to the executive secretary of the board is established in 201 KAR 22:135. Other examinations as determined by the board can be administered in lieu of, or in addition to, the NPTE [~~PES or ASI examination~~].

Section 6. The candidate for reinstatement may have his certificate reinstated without further examination upon payment of the reinstatement fee established in 201 KAR 22:135, and furnishing all information required of a certification renewal applicant in 201 KAR 22:110 to the executive secretary of the board. Assistants applying for reinstatement who have not been certified for three (3) or more years and who have not been lawfully employed as an assistant in another state shall, in addition, be required to work with on-site supervision for a maximum period of time of up to six (6) months, and after an evaluation of the period of supervision, the board may require the applicant to be reexamined. An assistant who has been licensed and working in another state shall be required to provide verification that his license to practice in that state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate shall be at the board's discretion after evaluation of all evidence.

Section 7. Physical therapist candidates who fail to pass the physical therapists' licensure examination may become special candidates for physical therapist's assistant certification by applying for certification by examination and successful completion of that examination. [~~Foreign trained physical therapist candidates who fail to complete general education requirements within one (1) year who have met all other requirements for physical therapist licensure may also become special candidates for certification as a physical therapist's assistant by written request to the board.~~]

Section 8. Certification, which shall be in effect until March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement and [,] reinstatement [~~and foreign trained special means candidates who lack sufficient general education credits~~] have met all requirements and the board has received notice from the Professional Examination Service [~~Assessment Systems, Incorporated~~] that the candidate by examination has received a passing grade of at least the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy set equal to a scaled score of 600. [~~national raw average score minus one and five tenths (1.5) standard deviation set equal to a converted score of seventy five (75).~~]

GEORGIA KING, Chairman

APPROVED BY AGENCY: February 19, 1993

FILED WITH LRC: March 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1993 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Ms. Nancy Brinly, Executive Secretary, State Board of Physical Therapy, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215, (502)595-4687.

REGULATORY IMPACT ANALYSIS

Contact person: Nancy Brinly

(1) Type and number of entities affected: Possibly more than 100 applicants for physical therapist's assistant certification per year.

(a) Direct and indirect costs or savings to those affected: No cost factors except for a person failing the examination.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: No changes for agency.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The ability to change from a "statistical" or norm referenced, to the defensible "performance" or criterion referenced approach to examination scoring has

long been sought by physical therapy licensure boards. The passing score on the test will be set relative to the difficulty level of test items and the ability of "minimally competent" candidates. Separation of "competent" and "incompetent" candidates are then distributed on performance rather than on statistical standards.

TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

KENTUCKY PAROLE BOARD
(Proposed Amendment)

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole and the issuance of warrants [~~by the board~~].

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these administrative regulations.

(1) Charges of parole violation are initiated by a parole officer of the Department of Corrections [~~Cabinet~~] by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee will not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.

(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Department of Corrections [~~Cabinet~~], Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections [~~Cabinet~~] in matters relating to the revocation of probation or parole.

(3) No hearing shall be conducted within five (5) [~~ten (10)~~] days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board. With the approval of the Parole Board, and subject to any conditions the board may stipulate, these hearings may be conducted by telecommunications or any other similar or related method.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony must do so under oath, administered by the administrative law judge, and will be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings will be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition, however, such evidence will be subject to rebuttal by the parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Chairman of the Parole Board who shall then issue a parole violation warrant which will cause the parolee to be brought before the Parole Board for a final parole revocation hearing. Notwithstanding a finding of probable cause, [~~for their decision on whether a parole violation warrant should be issued, except that,~~] upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Chairman of the Parole Board for [~~board for their decision on~~] the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. [~~whether the warrant should be issued and the parolee returned for further proceedings.~~] This recommendation shall be advisory only and shall not be binding on the board. In the event that the administrative law judge recommends that a parolee not be returned as a parole violator, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant. This referral will be made at the discretion of the administrative law judge but shall be made only when the administrative law judge finds that there exists substantial mitigating factors or there exists a viable alternative to reincarceration.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases will be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

~~[(12) If a parolee allegedly has emotional problems, a written report must be received as to the emotional stability or state of the parolee prior to the preliminary revocation hearing.]~~

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) Upon referral of a case to the Chairman of the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the chairman shall issue the parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman the warrant may be issued by any board member who has been designated, in writing, by the chairman to act in his behalf in such matters, or issued with the signature of four (4) board members.

(2) Upon referral of a case to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, such referral being made pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue such warrant.

(3) In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Chairman of the Parole Board may, upon sworn affidavit of the supervising parole officer, swearing that some violation has occurred, issue a parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman such warrants may be issued by majority vote of the board and the signature of four (4) board members shall be sufficient to issue such warrant. If no quorum of the board is present, a board member who has been designated, in writing, by the chairman to act in his behalf in such matters may issue such warrant.

(4) In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue a warrant.

(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. Upon the vote of the board to issue any such warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue a warrant.

(6) The board may, in its discretion, decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (3) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) In any case where a vote of the board is required to issue a parole violation warrant, in the event there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, the chairman, or a board member designated by the chairman, in writing, to act in his behalf in such matters, is authorized to issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If the chairman, or his designee, issues a parole violation warrant under such circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman or his designee. ~~[Parole Violation Warrants. Upon referral of a case by the administrative law judge to the Parole Board for further revocation consideration, or the issuance of a warrant, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Such warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signatures of four (4) board members shall be sufficient to issue a warrant. In the event there is no quorum of the board present to concur that probable cause exists, the chairman is authorized to issue a parole violation warrant if he, upon review, concurs that probable cause exists to issue said warrant. If the chairman issues a parole violation warrant in the absence of a quorum of the board, the board shall vote, as soon as is reasonable on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman.]~~

Section 4. Absconding. ~~[In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that the parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky,~~

~~the Parole Board may, upon sworn affidavit of the supervising parole officer swearing that said violation has occurred, issue a warrant for the arrest of the parolee. In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred.~~] Except in those cases where a preliminary parole revocation hearing is held by the supervising state in the case of a parolee being supervised in another state, upon apprehension or return to the state of Kentucky of a parolee for whom a parole violation warrant has been issued without a preliminary revocation hearing, such hearing shall then be [~~, a preliminary parole revocation hearing is~~] conducted as set forth elsewhere in Section 1 of this administrative regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee must be ordered returned to the appropriate institution of the Kentucky Department of Corrections [~~Cabinet~~] for further consideration by the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case must be referred to the Chairman of the Parole Board who must then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier will be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter will proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings will be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee will have the charges, specified in the warrant, explained to him and he will be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he must request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee must occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings will be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a witness or production of documents, the board will issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses will be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board will present a short statement of the charges against the parolee.

(c) The parole officer will present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee will present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board will then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board will receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board will then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver will be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole will be made by the majority vote of the board without any further proceedings.

JOHN C. RUNDA, Chairman

APPROVED BY AGENCY: March 8, 1993

FILED WITH LRC: March 8, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 1993 at 9 a.m., in the Corrections Conference Room, 5th Floor, State Office Building. Those interested in attending this hearing shall notify in writing: John C. Runda, Ph.D., Chairman, Kentucky Parole Board, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John C. Runda, Ph.D.

(1) Type and number of entities affected: 2,926 employees of the

Department of Corrections, 10,464 inmates, 1,000 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected: This regulation will reduce by five days the amount of time a parole violator stays in a county jail.

1. First year: $22.75/day x 5 days x 1,000 parole violators = $113,570 savings per year for the Department of Corrections.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:020. 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 February 14, 1993 [~~January 15, 1993~~], 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 (Amended 2/14/93)
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
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 Materiai, 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: February 14, 1993

FILED WITH LRC: February 17, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 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: 2,926 employees of the Department of Corrections, 10,464 inmates, 14,464 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 March 15 [~~February 12~~], 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
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 (Amended 3/15/93)
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: March 15, 1993

FILED WITH LRC: March 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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: 521 employees of the Kentucky State Reformatory, 1387 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 March 15 [February 12], 1993 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.

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 (Amended 3/15/93)
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment (Amended 3/15/92) (Renumbered from 030000-04)
KSP 02-12-01	Inmate Personal Funds (Amended 3/15/93)
[KSP 030000-04	Requisition and Purchase of Supplies and Equipment (Deleted 3/15/93)]
KSP 05-20-01	[040000-01] Management Information System (Amended 3/15/93)
KSP 06-01-01	040000-02] Inmate Records (Amended 3/15/93)
[KSP 060000-01	Special Security Unit (Deleted 3/15/93)]
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
[KSP 060000-04	Protective Custody Unit (Deleted 3/15/93)]
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 10-02-05	Special Security Unit (Amended 3/15/93) (Renumbered from 060000-01)
KSP 10-04-01	Special Needs Inmates (Amended 3/15/93) (Renumbered from 110000-10)
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
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 (Deleted 3/15/93)]
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 (Deleted 3/15/93)]
[KSP 110000-10	Special Needs Inmates (Deleted 3/15/93)]
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
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 (Deleted 3/15/93)]
KSP 110000-18	Functions of the Classification Committee
[KSP 120000-07	Community Center Program (Deleted 3/15/93]
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 13-02-11	Psychological/Psychiatric Treatment Upon Release (Added 3/15/93)
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 130000-10	Execution Plan
KSP 14-03-01	Marriage of Inmates (Added 3/15/93)
KSP 14-06-01	Inmate Grievance Procedure (Added 3/15/93)
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Due Process/Disciplinary Procedures
KSP 15-10-01	Discharge of Inmates by Shock Probation
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 (Amended 3/15/93)
KSP 18-15-01	Protective Custody Unit (Amended 3/15/93) (Renumbered from 060000-04)
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: March 15, 1993

FILED WITH LRC: March 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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: 315 employees of the Kentucky State Penitentiary, 788 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 March 15 [~~February 12~~], 1993, 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.

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 Accounts [~~(Amended 2/12/93)~~]
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training (Amended 3/15/93)
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 (Amended 3/15/93)
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 (Amended 3/15/93)
NTC 16-02-01	Visiting (Amended 3/15/93)
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)~~]
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
NTC 23-01-01 Religious Services
NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program
NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-01-03 Graduated Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure (Amended 3/15/93)
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: March 15, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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: 269 employees of the Northpoint Training Center, 926 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 6:090. Frankfort Career Development 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 [~~secretary~~] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [~~cabinet~~] or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections [~~Cabinet~~] the following policies and procedures, revised March 15, 1993 [~~February 14, 1992~~], are incorporated by reference and shall be referred to as Frankfort Career Development Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections [~~Cabinet~~], State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

FCDC 01-04-01 Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
FCDC 01-05-01 Duties and Responsibilities of FCDC Duty Officer
FCDC 01-09-01 Organization and Assignment of Responsibilities
FCDC 02-02-01 Inventory of Nonexpendable Personal Property
FCDC 02-09-01 Inmate Account Draw and Savings Deposit Transactions Between Inmates
FCDC 02-10-01 Fiscal Management and Control
FCDC 02-11-01 Fiscal Management: Accounting Procedures
FCDC 02-12-01 Fiscal Management: Checking Accounts
FCDC 02-13-01 Purchasing and Receiving
FCDC 06-02-01 Inmate Records
FCDC 08-01-01 Fire Safety Practices (Amended 3/15/93) [~~(Revised 2/14/92)~~]
FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures [~~(Revised 2/14/92)~~]
FCDC 09-03-01 Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials
FCDC 09-06-08 Searches and Contraband Control
FCDC 11-03-01 Food Service (Amended 3/15/93)
FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services
FCDC 12-04-01 Sanitation Practices and Inspections

FCDC 13-01-01	Use of Pharmaceutical Products (Amended 3/15/93)
FCDC 13-01-02	Medical Emergencies (Amended 3/15/93)
FCDC 13-01-03	Informed Consent
FCDC 13-02-01	Inmate Medical Screenings and Health Evaluations (Amended 3/15/93)
FCDC 13-03-01	Psychiatric and Psychological Services
FCDC 13-03-02	Parental Administration of Medications and Use of Psychotropic Drugs
FCDC 13-05-01	Family Notification: Serious Illness, Injury, Major Surgery or Death
FCDC 13-06-01	Chronic and Convalescent Care (Amended 3/15/93)
FCDC 13-08-01	Sick Call/Physician's Weekly Clinic
FCDC 13-09-01	Management of Serious and Infectious Diseases (Amended 3/15/93)
FCDC 13-10-01	Treatment Protocol Regarding First-Aid Procedures, Routine Health Care
FCDC 13-11-01	Health Education: Provision of Special Health Care Needs
[~~FCDC 13-12-01 Elective Services (Deleted 3/15/93)~~]	
FCDC 13-13-01	Physicians Referrals
FCDC 13-14-01	Health Records
FCDC 13-15-01	Routine and Emergency Dental Appointments (Amended 3/15/93)
FCDC 13-16-01	Routine and Emergency Eye Examinations
FCDC 13-17-01	Inmate Death
FCDC 14-01-01	Prohibiting Inmate Authority Over Other Inmates
FCDC 14-02-01	Inmate Grievance System [(~~Revised 2/14/92~~)]
FCDC 14-03-01	Inmates Shall Not Be Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment
FCDC 14-04-01	Legal Services Program
FCDC 15-01-01	Good Time - Credits
FCDC 15-03-01	Conduct of Adjustment Hearings (Chairperson)
FCDC 15-04-01	Detention Orders and Protective Custody Requests
FCDC 16-01-01	Visiting (Amended 3/15/93) [(~~Revised 2/14/92~~)]
FCDC 16-02-01	Inmate Correspondence [(~~Revised 2/14/92~~)]
FCDC 16-03-01	Inmate Access to Telephones [(~~Revised 2/14/92~~)]
FCDC 16-04-01	Inmate Packages [(~~Added 2/14/92~~)]
FCDC 17-01-01	Inmate Property Control [(~~Revised 2/14/92~~)]
FCDC 17-02-01	Inmate Reception, Orientation, and Discharge [(~~Revised 2/14/92~~)]
FCDC 18-01-01	Inmate Classification and Review [(~~Revised 2/14/92~~)]
CDC 19-01-01	Security and Operation of the Governmental Services Program [(~~Revised 2/14/92~~)]
FCDC 19-02-01	Inmate Work Programs [(~~Revised 2/14/92~~)]
FCDC 20-01-01	Academic and Vocational Education [(~~Revised 2/14/92~~)]
FCDC 22-01-01	Privilege Trips
FCDC 22-01-03	Shopping Trips [(~~Added 2/14/92~~)]
FCDC 22-02-01	Recreation and Inmate Activities (Amended 3/15/93) [(~~Revised 2/14/92~~)]
FCDC 22-02-03	Arts and Crafts Program [(~~Added 2/14/92~~)]
FCDC 23-01-01	Religious Services [(~~Revised 2/14/92~~)]
FCDC 24-01-01	Social Services Program (Amended 3/15/93) [(~~Revised 2/14/92~~)]
FCDC 24-02-01	Substance Abuse Programs [(~~Revised 2/14/92~~)]
FCDC 25-01-01	Escorted Leaves [(~~Revised 2/14/92~~)]
FCDC 25-03-01	Release Preparation Program [(~~Revised 2/14/92~~)]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: March 15, 1993

FILED WITH LRC: March 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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: 45 employees of the Frankfort Career Development Center, 180 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These administrative regulations are in conformity with those provisions.

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

RFC 01-06-01	Inmate Access to and Communication with RCC Staff [(~~Amended 1/15/93~~)]
RFC 01-08-01	Public Information and News Media Access [(~~Amended 1/15/93~~)]
RFC 01-09-01	Staff Participation in Professional Organization and

Conferences; Provisions for Leave and Reimbursement for Expenses [~~(Amended 1/15/93)~~]
RFC 01-10-01 RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies [~~(Amended 1/15/93)~~]
RFC 02-01-01 Fiscal Management: Organization
RFC 02-01-02 Fiscal Management: Accounting Procedures
RFC 02-01-03 Fiscal Management: Agency Funds [~~(Amended 1/15/93)~~]
RFC 02-01-04 Fiscal Management: Insurance
RFC 02-02-01 Fiscal Management: Budget (Amended 3/15/93)
RFC 02-02-02 Inmate Control of Personal Funds (Amended 3/15/93)
RFC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RFC 02-02-05 Inmate Canteen Services
RFC 02-03-01 Fiscal Management: Audits
RFC 02-04-01 Purchase Orders (Amended 3/15/93)
RFC 02-04-02 Processing of Invoices (Amended 3/15/93)
RFC 02-06-01 Property Inventory [~~(Amended 1/15/93)~~]
RFC 03-13-01 Staff/Visitor Meals [~~(Amended 1/15/93)~~]
RFC 04-01-01 Employee Training and Development (Amended 3/15/93)
RFC 06-01-01 Offender Records
RFC 06-03-01 Records Release of Information
RFC 06-03-02 Storage of Expunged Records
RFC 06-03-04 Access to Psychological and Psychiatric Reports
RFC 06-04-01 Court Trips
RFC 06-04-02 Receipt of Order of Appearance
RFC 08-01-01 Fire Prevention [~~(Amended 1/15/93)~~]
RFC 08-08-01 Hazardous Communication Program [~~(Amended 1/15/93)~~]
RFC 09-04-03 Duties and Responsibilities of the Fire Safety Officer
RFC 09-06-01 Search Policy/Disposition of Contraband [~~(Amended 1/15/93)~~]
RFC 10-01-02 Temporary Holding Cell Guidelines
RFC 11-01-01 Food Services: General Guidelines
RFC 11-02-01 Food Service: Security
RFC 11-03-01 Dining Room Guidelines [~~(Amended 1/15/93)~~]
RFC 11-04-01 Food Service: Meals [~~(Amended 1/15/93)~~]
RFC 11-04-02 Food Service: Menu, Nutrition and Special Diets [~~(Amended 1/15/93)~~]
RFC 11-05-02 Medical Screening of Food Handlers [~~(Amended 1/15/93)~~]
RFC 11-06-01 Food Service: Inspections and Sanitation [~~(Amended 1/15/93)~~]
RFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
RFC 12-01-01 Sanitation, Living Conditions Standards, Clothing Issues [~~(Amended 1/15/93)~~]
RFC 12-01-02 Bed Areas [~~(Amended 1/15/93)~~]
RFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry [~~(Amended 1/15/93)~~]
RFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule [~~(Amended 1/15/93)~~]
RFC 12-03-02 Barber Shop Services and Equipment Control [~~(Amended 1/15/93)~~]
RFC 12-04-01 Institutional Inspections [~~(Amended 1/15/93)~~]
RFC 12-05-02 Use of Noncombustible Receptacle [~~(Amended 1/15/93)~~]
RFC 12-06-01 Insect and Vermin Control [~~(Amended 1/15/93)~~]
RFC 13-01-01 Organization of Health Services [~~(Amended 1/15/93)~~]
RFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call [~~(Amended 1/15/93)~~]
RFC 13-03-01 Dental Policy/Sick Call [~~(Amended 1/15/93)~~]
RFC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical (Amended 3/15/93) [~~(Amended 1/15/93)~~]
RFC 13-05-02 Licensure and Training Standards for Medical Department [~~(Amended 1/15/93)~~]
RFC 13-06-01 Suicide Prevention and Intervention Program [~~(Amended 1/15/93)~~]
RFC 13-06-02 First Aid and CPR Training Program [~~(Amended 1/15/93)~~]
RFC 13-06-03 Emergency Medical and Dental Care Services (Amended 3/15/93) [~~(Amended 1/15/93)~~]
RFC 13-06-04 First Aid/CPR Training Program
RFC 13-07-01 Health Records [~~(Amended 1/15/93)~~]
RFC 13-07-03 Use of Pharmaceutical Products [~~(Amended 1/15/93)~~]
RFC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death [~~(Amended 1/15/93)~~]
RFC 13-10-01 Health Education/Special Health Programs [~~(Amended 1/15/93)~~]
RFC 13-11-01 Informed Consent [~~(Amended 1/15/93)~~]
RFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC [~~(Amended 1/15/93)~~]
RFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center [~~(Amended 1/15/93)~~]
RFC 13-13-01 Identification of Special Needs Inmates [~~(Amended 1/15/93)~~]
RFC 13-15-01 Medical Restraints [~~(Amended 1/15/93)~~]
RFC 13-16-01 Specialized Health Services [~~(Amended 1/15/93)~~]
RFC 13-17-01 Vision Care and Optometry Services [~~(Amended 1/15/93)~~]
RFC 13-18-01 Infection Control [~~(Amended 1/15/93)~~]
RFC 14-01-01 Inmate Rights and Responsibilities [~~(Amended 1/15/93)~~]
RFC 16-01-01 Inmate Visiting [~~(Amended 1/15/93)~~]
RFC 16-02-01 Telephone Communications [~~(Amended 1/15/93)~~]
RFC 16-03-01 Mail Regulations
[~~RFC 16-03-02 Christmas Packages (Deleted 3/15/93)~~]
RFC 17-01-01 Assessment/Orientation Procedure for Intrasystem Transfers [~~(Amended 1/15/93)~~]
RFC 17-03-01 Inmate Personal Property and Property Control [~~(Amended 1/15/93)~~]
RFC 17-05-02 Housing Unit Assignment Assessment/ Classification Center [~~(Amended 1/15/93)~~]
RFC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting [~~(Amended 1/15/93)~~]
RFC 17-05-04 Assessment Center Operations Rules and Regulations [~~(Amended 1/15/93)~~]
RFC 17-05-05 Assessment Center Operations and Reception Programs (Amended 3/15/93) [~~(Amended 1/15/93)~~]
RFC 18-01-01 Institutional Classification Committee [~~(Amended 1/15/93)~~]
RFC 19-01-01 Job Assignments [~~(Amended 1/15/93)~~]
RFC 19-02-01 Government Service Details [~~(Amended 1/15/93)~~]
RFC 20-01-01 Academic Education Program [~~(Amended 1/15/93)~~]
RFC 21-01-01 Library Services (Amended 3/15/93)
RFC 22-01-01 Recreation and Inmate Activities [~~(Amended 1/15/93)~~]
RFC 22-03-01 Inmate Clubs and Organizations (Amended 3/15/93) [~~(Amended 1/15/93)~~]
RFC 23-01-01 Religious Services [~~(Amended 1/15/93)~~]
RFC 24-01-01 Social Services and Counseling Program [~~(Amended 1/15/93)~~]
RFC 25-04-02 Parole Eligibility Dates (Amended 3/15/93)
RFC 25-05-01 Inmate Discharge Procedure [~~(Amended 1/15/93)~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: March 15, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 175 employees of the Roederer Correctional Complex, 635 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(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 commissioner [~~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 March 15 [~~February 12~~], 1993, 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 (Amended 3/15/93)
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 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
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: March 15, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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: 143 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.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner [~~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 March 15, 1993 [~~November 13, 1992~~] are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01	Organization and Assignment of Responsibility
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds
BCFC 02-01-04	Fiscal Management: Insurance
BCFC 02-01-05	Fiscal Management: Budget
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts
BCFC 02-02-02	Inmate Control of Personal Funds
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records
BCFC 06-02-01	Storage of Expunged Records
BCFC 06-03-01	Court Trips
BCFC 06-03-02	Receipt of Order of Appearance
BCFC 07-04-01	Smoking Control (Added 3/15/93)
BCFC 08-02-01	Fire Prevention
BCFC 08-03-01	Fire Procedures
BCFC 08-03-02	Fire Extinguishers and Their Use
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02	OSHA Hazard Communication Program
BCFC 09-06-01	Search Policy/Disposition of Contraband
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area
BCFC 10-01-01	Special Management Inmates
BCFC 11-01-01	Food Services: General Guidelines
BCFC 11-02-01	Food Service: Security
BCFC 11-03-01	Dining Room Guidelines
BCFC 11-04-01	Food Service: Meals
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02	Health Requirements of Food Handlers
BCFC 11-06-01	Food Service: Inspection and Sanitation
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01	Staff/Visitor Meals
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02	Barbershop Services and Equipment Control
BCFC 12-04-01	Institutional Inspections
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01	Pest Control
BCFC 13-01-01	Organization of Health Services
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call

BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 13-18-01 Infection Control
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 14-04-01 Inmate Participation in Authorized Research
BCFC 15-01-01 Due Process/Disciplinary Procedures
BCFC 16-01-01 Inmate Visiting
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations
BCFC 16-03-02 Inmate Packages
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
BCFC 17-04-01 Unauthorized Items
BCFC 17-05-01 Inmate Canteen
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic School [~~(Amended 11/13/92)~~]
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning [~~(Amended 11/13/192)~~]
BCFC 20-03-01 Academic Curriculum [~~(Amended 11/13/92)~~]
BCFC 21-01-01 Library Services
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates
BCFC 24-01-01 Social Services and Counseling Program
BCFC 24-01-02 Casework Services
BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: March 15, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 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, 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: 42 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
Department of Vehicle Regulation
Division of Motor Carriers
Division of Motor Vehicle Enforcement
(Proposed Amendment)

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658
STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. The State Primary Road System consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five (5) mile access on state-maintained highways and a one (1) mile access on locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles

with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet be provided statewide access unless a route is specifically excluded for safety reasons. This regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Definitions. (1) "Length exclusion safety device" means an appurtenance at the front or rear of a commercial motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer. A device excluded from length determination shall not be designated, designed or used for carrying cargo.

(2) "Width exclusion safety device" means an appurtenance at the side of a commercial motor vehicle semitrailer or trailer whose function is normally related to the safe and efficient operation of the semitrailer or trailer. A device excluded from width determination shall not be designated, designed or used for carrying cargo.

(a) The following items shall be designated as width exclusion safety devices:

1. Rearview mirrors;
2. Turn signal lamps;
3. Hand holds for cab entry or egress;
4. Splash and spray suppressant devices; and
5. Load induced tire bulge.

(b) The following items shall be designated as width exclusion safety devices as long as they do not extend beyond three (3) inches on either side of the vehicle:

1. Corner cap;
2. Rear and side door hinges and their protective hardware;
3. Rain gutters;
4. Side marker lamps;
5. Lift pads for piggyback trailers;
6. Hazardous materials placards;
7. Tarp and tarp hardware;
8. Tiedown assembly on platform trailers;
9. Wall variation from true flat; and
10. Weevil pins and sockets on low bed trailers.

Section 2. [1.] Except as provided in Section 3 [2] of this administrative regulation, the maximum dimensions for all motor vehicles except buses using all classes of highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet, excluding any width exclusion safety device.

(3) Length. The maximum lengths listed below shall not include length exclusion safety devices:

(a) The length of a single unit motor vehicle, including any part of the body or load, shall not exceed forty-five (45) feet.

(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet shall not be required to obtain an overdimensional permit.

(c) If the front or rear overhang of a single unit motor vehicle exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle.

(d) A motor vehicle and trailer or semitrailer combination, including any part of the body or load, shall not exceed sixty-five (65) feet.

(e) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang shall not be included in the measurement of the sixty-five (65) feet limit established in paragraph (d) of this subsection.

Section 3. [2.] (1) Motor vehicles except buses with dimensions greater than those specified in Section 2 [1] of this administrative regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overdimensional permit only on the highways listed in Section 4 [3](1) of this administrative regulation, on the five (5) mile access authorized in Section 4 [3](2) of this administrative regulation and on the one (1) mile access authorized in Section 4 [3](3) of this administrative regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 4 [3](1) of this administrative regulation:

(a) Width - 102 inches including any part of the body or load except for width exclusion devices.

(b) Length.

1. Semitrailers - excluding length exclusion devices, fifty-three (53) feet including body and load when operated in tractor semitrailer combination.

2. Trailers - excluding length exclusion safety devices, twenty-eight (28) feet including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet, excluding length exclusion safety devices, shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.

3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 4 [3](1) of this administrative regulation or on the five (5) mile local access authorized in Section 4 [3](2) of this administrative regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) The [No] dimensions specified in this section shall not be subject to any enforcement tolerances provided in any other section.

Section 4. [3.] (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 3 [2](2) of this regulation:

The Interstate and National Defense Highway System.

Audubon Parkway - from Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 near Smiths Grove to US 27 west of Somerset.

Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.

Green River Parkway - From I-65 in Bowling Green to US 60 Bypass in Owensboro.

Purchase Parkway - from Tennessee state line to I-24 in Marshall County.

Mountain Parkway and Extension - from I-64 at Winchester to US 460 at Salyersville.

Pennyrile Parkway - From US 41A in Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 south of Eddyville to US 31W in Hardin County.

KY 3 - From the junction with US 23 at Auxier to the junction with KY 645 south of Inez.

KY 4 - The entire circle of Lexington.

KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.

KY 15 - from US 119 in Whitesburg to the Mountain Parkway at Campton.

KY 18 - from KY 338 at Burlington to KY 1017 in Florence.

KY 21 - from I-75 near Berea to US 25 south in Berea.

US 23 - from KY 610 at Dorton to the Ohio state line.

US 23 - from the Virginia state line to US 119 near Jenkins.

US 23 Spur - from US 23/60 in Ashland to the Ohio state line.

US 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County.

US 25 - from US 421 south of Richmond to KY 876 in Richmond.

US 25 - from KY 418 southeast of Lexington to KY 4.

US 25 - from US 42 in Florence to KY 471 near Alexandria.

US 25E - from Virginia state line to I-75 north of Corbin.

US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31E 1150 - From the junction with I-265 in southeast Jefferson County to the junction with I-264 north of West Buchel.

US 31W - from Tennessee state line to KY 73 north of Franklin.

US 31W - from the Green River Parkway to US 68 north of Bowling Green.

US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.

US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - from KY 11 in Fleming County to US 60 at Morehead.

KY 35 - from US 127 at Bromley to I-71 north of Sparta.

KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - from the Kawneer Corporation Plant Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.

US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.

US 41 - from Pennyrile Parkway at Henderson to Indiana state line.

US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - from I-264 northeast of Louisville to Oldham County line.

US 42 - from I-75 in Florence to US 25 in Florence.

US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north to KY 47 at Ghent.

US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.

US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.

US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.

US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.

KY 52 - from KY 876 in Richmond to KY 499 at Irvine.

KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.

US 60 - from US 51 in Wickliffe to US 62 east of Paducah.

US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.

US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - from KY 144 in Meade County to US 31W at Tip Top.

US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.

KY 61 - from Tennessee state line to KY 90 at Burkesville.

KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.

US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.

US 62 - from US 150 at Bardstown to KY 245 at Bardstown.

US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.

US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 62 - from US 68 at Washington to the Ohio state line at Maysville.

US 68 - from US 62 at Reidland to KY 284 in McCracken County.

US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.

US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.

US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.

US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.

US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).

KY 69 - from US 60 at Hawesville to Indiana state line.

KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.

KY 79 - from KY 1051 in Brandenburg to Indiana state line.

KY 80 - from KY 80B at Somerset to US 25 north of London.

KY 80 - from KY 15 at Hazard to US 23 at Watergap.

KY 80B - From US 27 at Somerset to KY 80 east of Somerset.

KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - from KY 61 at Burkesville to US 27 at Burnside.

KY 109 - from KY 670 in Webster County to US 60 in Union County.

KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.

KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.

US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - from US 25E south of Pineville to US 421 at Harlan.

US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.

KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.

US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).

US 127 - from US 127 Bypass north of Danville to KY 151 north of Lawrenceburg via the Lawrenceburg bypass.

US 127 - from I-64 west of Frankfort to US 421 in Frankfort.

US 127 - from KY 22 in Owenton to KY 35 at Bromley.

US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.

KY 144 - from KY 448 south of Brandenburg to US 60.

US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).

US 150B - from US 127 south of Danville to US 150 east of Danville.

KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.

KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.

KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.

KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.

KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.

KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).

KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.

US 231 - from US 60 Bypass in Owensboro to Indiana state line.

US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.

KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.

KY 237 - from KY 18 east of Burlington to I-275 in Boone County.

KY 245 - from US 150 east of Bardstown to I-65 south of Shepherdsville.

KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.

KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.

KY 338 - from the junction with I-75 west of Richwood to the junction with US 25 in Richwood.

KY 341 - from US 62/421 near Midway north to I-64.

KY 348 - from Jackson Purchase Parkway west of Benton to US 641 in Benton.

KY 418 - from US 25 south of Lexington to I-75.

US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.

US 421 - from Daniel Boone Parkway to 2nd Street in Manchester.

US 421 - from KY 4 in Lexington to US 62 east in Scott County.

US 421 - from US 460 in Frankfort to US 127 north.

US 421 - from KY 55 south of Newcastle in Henry County to I-71 west of Campbellsburg.

KY 425 - from US 60 at Henderson to the Pennyrile Parkway.

US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.

KY 446 - from US 31W northeast of Bowling Green to I-65.

KY 448 - from KY 144 to KY 1051 at Brandenburg.

US 460 - from I-64 north of Mt. Sterling to KY 686.

US 460 - from Mountain Parkway Extension to US 23 near Paintsville.

KY 461 - from KY 80 in Pulaski County to US 25 in Rockcastle County.

KY 471 - from US 27 in Campbell County to the I-275/471 junction.

KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg.

KY 555 - from US 150 at Springfield to Bluegrass Parkway.

US 641 - from Tennessee state line to US 641A south of Benton.

US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.

KY 645 - from US 23 south of Ulysses to KY 3 south of Inez.

KY 676 - from US 127 in Frankfort to US 60.

KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.

KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.

KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.

KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.

KY 876 - from I-75 at Richmond to KY 52 east of Richmond.

KY 922 - from KY 4 in Lexington north to I-64 and I-75.

KY 1017 - from US 25 in Florence to I-75.

KY 1051 - from KY 79 to KY 448 south of Brandenburg.

KY 1597 - From KY 435 north of Maysville to KY 8 all in Mason County.

KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway

KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.

KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 3 [2] of this administrative regulation shall be allowed five (5) driving miles on state maintained highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest.

(3) Motor vehicles with the increased dimensions specified in Section 3 [2] of this administrative regulation shall be allowed one (1) driving mile on nonstate maintained public use highways from the highway segments specified in subsection (1) of this administrative regulation for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 5. [4.] (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 3 [2] of this administrative regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 3 [2] of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding any length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

Section 6 [5]. Nonstate Maintained Exceptions to One (1) Mile Automatic Access. The following local governments have adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile access provision of Section 4 [3](3) of this administrative regulation: The city of Anchorage in Jefferson County - the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by STAA-dimensioned vehicles are:

(1) Evergreen Road;

(2) Bellewood Road;

(3) Lucas Lane; and

(4) Old Harris Creek Road.

Section 7. [6.] State-maintained Exceptions to Automatic Five (5) Mile Access. The Department of Highways has found the following road segments for safety reasons to be exempt from the five (5) mile automatic access on state-maintained highways set forth in Section 4 [3](2) of this administrative regulation. These road segments shall not be used by STAA-dimensioned vehicles without an overdimensional permit: KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

Section 8. Length Measurements. (1) The Federal Highway Administration interpretation of truck length and width exclusive devices published in the "Federal Register" on March 13, 1987 shall govern measuring the length of a semitrailer or trailer. Pages 7834 through 7840 of the March 13, 1987 "Federal Register" are incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference may be viewed, copied or obtained from the Transportation Cabinet, Division of Motor Vehicle

Enforcement, 8th Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502)564-3276. The business hours of the division are 8 a.m. to 4:30 p.m. eastern time on weekdays.

NORRIS BECKLEY, Commissioner
J.M. YOWELL, State Highway Engineer
JERRY ANGLIN, Deputy Secretary, Commissioner of Highways
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: February 16, 1993

FILED WITH LRC: March 1, 1993 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on April 22, 1993 at 9 a.m., local prevailing time in Room 1003 of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by April 17, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. The party requesting the transcript will be responsible for paying the cost of its preparation. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. if the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until April 17, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All operators of STAA type vehicles in Kentucky.

(a) Direct and indirect costs or savings to those affected: It has been brought to the attention of the Transportation Cabinet that the Federal Highway Administration has issued an interpretation of 23 CFR Part 658 relating to width and length exclusion devices, i.e., what items should not be included in the determination of the width or length of a motor vehicle. There are specifically some tarp covers which the Transportation Cabinet had included in the width of a truck when measuring it which had caused the truck to be considered overwidth and the driver issued a citation. In these cases the citation will no longer be issued, saving the commercial vehicle operator the cost of the citation ($20), court costs ($50) and the time and effort of dealing with district court. Very few of the overdimensional citations issued each year by the Division of Motor Vehicle Enforcement will be affected by this federal interpretation. However, the savings in each applicable instance will exceed $100. In Mason County KY 1597 was just reconstructed to allow access to a new container plant. The company has been using a temporary, alternate route to the plant. Using KY 1597 will shorten the distance they have to travel but should not cause a real savings.

1. First year: $100 for each instance of a citation not issued.

2. Continuing costs or savings: Same

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: Only a minor change in training of the Motor Vehicle Enforcement Officers will be required.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet is obligated to treat federal interpretations of the federal regulations the same as the federal regulations, therefore to insure that all parties were aware of the change, it had to be adopted in this administrative regulation. The inclusion of KY 1597 could not be omitted since the road was reconstructed specifically to allow STAA vehicles weighing 80,000 pounds to have access to the new container plant in Mason County.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: The Federal Highway Administration mandated the one-mile access on local roads.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. Tiering was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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.

TRANSPORTATION CABINET
Motor Vehicle Commission
(Proposed Amendment)

605 KAR 1:130. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY AND FUNCTION: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure.

Section 1. Hearings shall be conducted by a commission member of person designated by the commission as a hearing officer. Hearings shall be conducted pursuant to the Kentucky Rules of Civil

Procedure except as otherwise provided in this regulation. The hearing officer shall conduct the hearing and shall rule on matters of procedure and introduction of evidence. The hearing shall be conducted in the manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to any ruling of the hearing officer and shall be ruled on by the commission. The reason for any objection shall be stated and made a part of the stenographic record. All testimony shall be transcribed.

Section 2. Appearances. Any licensee may appear and be heard in person, or with or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the commission. Any attorney, in a representative capacity, appearing before the commission may be required to show his authority to act in such capacity.

Section 3. Argument. All oral arguments shall be succinct and concise. The hearing officer may curtail or set time limits for oral arguments.

Section 4. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties setting forth the date of such hearing must be given in writing by the Executive Director.

Section 5. Briefs. Briefs may be filed as a matter of right. All briefs shall be concise, summarizing first the evidence presented at the hearing. Copies of briefs must be typewritten or typed and printed and filed in quadruplicate. The time allowed for filing briefs shall be designated by the hearing officer, but in no event shall be less than five (5) days after the hearing. Respondent briefs may be filed by the commission, or filed by any person whose interests are affected. Reply briefs may be filed only when limited strictly to answering the brief of respondent. Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances may be granted in the discretion of the hearing officer if good cause for the continuance is shown and if requested at least forty-eight (48) hours in advance of hearing date.

Section 7. Depositions. The hearing officer may order testimony to be taken by deposition at any stage of the hearing. Depositions shall be taken before any person having power to administer oaths, or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. Except as otherwise provided in this regulation, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.

(1) Judicial notice. When called to the attention of the hearing officer, "judicial notice" may be taken of any matter situated in the files of the commission, the Revenue Cabinet or the Transportation Cabinet, any action pending which involves the commission or and all other matters of which a court of Kentucky may take judicial notice. A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

(2) Additional evidence. Upon application to the commission, prior to the decision of the commission in the case, the hearing may, in the discretion of the commission, be reopened for the presentation of additional evidence. Application for and additional hearing shall set forth concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. No person shall have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.

Section 10. The Report and Recommended Order. Upon the conclusion of a hearing, the hearing officer shall make a report and recommended order which shall contain his finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 11. Exceptions and Replies. Any party to a hearing may, within twenty (20) days after the date the finding of facts and conclusions of law and recommended order is filed with the commission, file and serve exceptions. Exceptions shall consist of as many objections to the whole or any part of the finding of facts and conclusions of law as the party filing the exceptions desires to make, with each objection numbered. Each objection shall fully state the nature and grounds for the objection. Parties filing exceptions shall serve a copy upon every other party participating in the hearing and shall certify to the commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy on every other party participating in the hearing and shall certify to the commission that such service has been accomplished.

Section 12. Final Order. Upon the filing of the exceptions and replies or upon expiration of the time for filing exceptions and replies, the hearing officer shall render the complete record to the commission which shall consider and rule upon the case. The commission may, after a study of the case, refer it back to the hearing officer and request the taking of more proof on any point in issue. The commission may require oral argument of the case. When the commission has rendered its decision in the case, its decision shall be served by mail upon all parties and shall be the final order of the commission. The final order shall contain the date of its rendition, and shall be final for purposes of judicial appeal.

Section 13. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission. There shall be no demurrers. Motions to dismiss, setting forth the reasons in support of the motion, may be heard by the commission.

Section 14. Reconsideration Hearings. Any party to the proceeding may request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission. The request shall be filed with the Executive Director within fifteen (15) days from the date the notice of the commission's decision is mailed. A reconsideration hearing shall be granted only if the request presents significant, relevant information not previously available for consideration, or demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, or demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision. The commission shall consider requests for reconsideration in a summary manner. If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this regulation. The reconsideration hearing

shall be held within thirty (30) days of the decision to grant the request for reconsideration.

Section 15. Notices. Upon the filing of an appeal from an order or decision, the appellant shall serve a copy on all interested parties. All other hearings except license suspension or revocation hearings shall be held only after notice given at least ten (10) days before the date of the hearing. A notice of a license suspension or revocation hearing by registered mail to the licensee, sent to the business address of the licensee shown on the latest application for a license shall be deemed sufficient notice.

Section 16. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except when permission is granted by the hearing officer, all papers filed under these rules shall be typewritten or printed. All copies shall be clearly legible and double spaced, except for quotations. All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.

Section 17. Subpoenas and Subpoena Duces Tecum. The party desiring a subpoena shall make application at least five (5) days before the hearing date with the Executive Director of the commission. The application shall be in writing, and shall state the name and address of each witness required. If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 18. Costs of Hearing. If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer. The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

RAYMOND COTTRELL, SR., Chairman

APPROVED BY AGENCY: February 12, 1993

FILED WITH LRC: March 15, 1993 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this proposed amended administrative regulation shall be held at 10 a.m. on Thursday, April 22, 1993, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed new 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 new administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed new administrative regulation to: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601, (502) 564-3750.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: The agency has licensed 3,103 motor vehicle dealers and 75 motor vehicle manufacturers and distributors thus far for calendar year 1993. All of these, as well as others who obtain a license during the remainder of the year, would be affected by the proposed amendment if they are found to be in violation of a statute or regulation administered by the agency. Any finding of violation would follow the issuance of an administrative citation detailing the charges, and an opportunity to be heard.

(a) Direct and indirect costs or savings to those affected: It is not possible to determine a specific amount which would be incurred or saved by the proposed amendment to the regulation for the reason that it is not possible to reliably estimate the number of hearings which will be scheduled before the agency in the future. For the calendar years 1991 and 1992, the agency incurred $11,254 in costs to a hearing officer and a court stenographer for hearings on licensee violations; not all of those proceedings resulted in a Final Order finding a violation on the part of the licensee.

1. First year: A specific amount is not determinable for the reasons state above; however, using the figure representing agency costs from calendar years 1991 and 1992 as a basis for future costs or savings, it can be estimated that the agency would save approximately $5,000 the first year.

2. Continuing costs or savings: A specific estimate of continuing direct and indirect cost or savings to those affected after the first year is not determinable, other than as stated above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors which would increase or decrease costs would include contract costs increases from the payees, i.e., the court stenographer and the hearing officer. However, as those costs are set by contract and have remained stable since the inception of the contracts, no increases are anticipated. The only other foreseeable factor is the nebulous possibility that the number of hearing notices to licensees would increase due to a change in the statutes or regulations administered by the agency; if the changes imposed made the laws more strict, it may mean that the number of citations issued would increase. As for the effect on competition, the proposed amendment to the administrative regulation was drafted in such a manner that it applies to all agency licensees; as the standards are applied in a uniform manner, no effect on competition is anticipated.

(b) Reporting and paperwork requirements: No effect is expected on the affected entities' reporting and paperwork requirements; all they would have to do is write a check or provide payment in a larger amount than a simple fine, if they are found to be in violation.

(2) Effects on the promulgating administrative body: Passing hearing costs on to licensees who are found in violation of a law saves the agency from incurring those expenses. If there is no violation, the agency absorbs the hearing costs; if there is a finding of guilt, those costs are passed on to the wrongdoer just as in the court system and in proceedings before other state agencies. The reallocation of those funds by the agency would enable it to more readily meet its budget obligations.

(a) Direct and indirect costs or savings: Direct and indirect savings to the agency would be those as set forth in (2) above.

1. First year: The savings to the agency the first year are estimated to be approximately $5,000. No direct or indirect costs are associated with the proposed amendment, other than those mentioned in 1(a)(3) above, i.e., cost increases from the hearing officer or court stenographer, or the enactment of more restrictive legislation which may result in an increase in the number of hearings held before the agency.

2. Continuing costs or savings: The savings to the agency in succeeding years are estimated to remain approximately the same as the first year, in the neighborhood of $5,000.

3. Additional factors increasing or decreasing costs: Factors which may increase or decrease costs are those set forth in 1(a)(3) above, i.e., cost increases from the hearing officer or court stenographer, or the enactment of more restrictive legislation which may result in an

increase in the number of hearings held before the agency.

(b) Reporting and paperwork requirements: When the agency issues a final order, it sends a copy of the order to the licensee involved. One change in reporting or paperwork requirements would be the addition of some language to the Final Order notifying the licensee of the costs associated with that licensee's hearing. Another would be the recordkeeping involved in timing a particular hearing to pass only those costs incurred as a direct result of that hearing on to the licensee.

(3) Assessment of anticipated effect on state and local revenues: Local revenues will not be affected by the proposed amendment; state revenues, in the form of agency income, would increase in the amounts estimated above (approximately $5,000 per year).

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of agency absorption of the costs was rejected for the reason that agency costs and level of services continue to increase while its income remains fairly stable. If there is wrongdoing by a licensee which results in the issuance of a hearing notice, it is better for the wrongdoer to pay the costs of those proceedings than the body of law-abiding licensees.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or government policies which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed regulation if in conflict: The proposed amendment does not present any conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendment does not present any conflict.

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Was tiering applied? No. The subject matter of the proposed regulation affects all licensees who are found to be in violation of any statute or regulation administered by the agency.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:120. Emergency certification.

RELATES TO: KRS 161.020, 161.028, 161,030, 161.100

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

NECESSITY AND FUNCTION: KRS 161.100 provides for the employment of school personnel in the event that fully [regularly] qualified teachers [persons] are not available for specific positions. This administrative regulation establishes the qualifications and procedures by which the local boards of education and the Education Professional Standards Board [State Board of Education] may comply with the statute.

Section 1. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board [Superintendent of Public Instruction] on request forms supplied by the [his] Office of Teacher Education and Certification:

(a) No qualified teachers have applied for the vacant position and to our knowledge qualified teachers are not available for the position.

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means.

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position [either] from the listings of teachers supplied by [the State Department of Education or by means of] the placement services of the teacher education institutions.

(d) The position will be filled by the most suitable applicant [best qualified person] available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession. [Effective with the 1988-89 academic year, an emergency certificate for full-time or part-time employment shall be issued only to individuals who have attained a bachelor's degree.]

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board [Superintendent of Public Instruction], depending upon the [his] assessment of [the] need for the position and the availability or anticipated availability of qualified teachers [personnel], shall approve or disapprove a request for the employment of emergency teachers [ing personnel]. The term of validity of an emergency certificate may be limited to a period less than the full school year; the beginning date shall be no earlier than the date the request form is received in the Department of Education.

(b) The issuance of an emergency certificate [Individuals, for whom application] for a full-time assignment [emergency certificate is being made by a local school district] for each [a second or any] subsequent year shall require completion [show evidence of progress towards regular certification by having enrolled in and earned a minimum] of six (6) hours of credit from the preparation program leading to the required certification for the position. [This required credit shall be earned subsequent to the issuance of the initial or any subsequent full-time emergency certificate and prior to the issuance of next succeeding full-time emergency certificate, until the applicable preparation program has been completed.]

(3) [Effective with the 1988-89 academic year,] Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, such as IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

(a) The applicant shall complete twelve (12) clock hours of training as required [participate in a two (2) day workshop to be conducted] by the Office of Special Instructional Services [Education for Exceptional Children]. [This workshop shall be conducted during a weekend period, arranged on a regional basis, and offered a minimum of two (2) times during each school year. Participation shall be required at the earliest session scheduled following employment.]

(b) The applicant shall complete [participate in] an additional six (6) clock hours of training during the fall conference [two (2) day workshop to be] conducted by the Division [Office] of [Education for] Exceptional Children Services [in conjunction with the OEEC fall conference]. Teachers employed after the fall conference shall complete these six (6) clock hours of training during [participate in] the spring conference of the Council for [on] Exceptional Children.

(c) The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. Such training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services. [Education for Exceptional Children.]

(4)(a) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers [ing personnel, restricted to substitute teaching only,] on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. Emergency certificates for substitute teaching may then be issued [by the Superintendent of Public Instruction restricted to substitute teaching only and] subject to the priority schedule for the employment of substitute

teachers as established by 704 KAR 20:210. [~~Emergency certificates for substitute teaching shall not be issued to applicants having less than sixty-four (64) semester hours of credit, except that the Superintendent of Public Instruction may grant approval for applicants having at least thirty-two (32) semester hours of credit or more whenever the need for such personnel is appropriately documented by the local school district superintendent and board of education using application forms provided by the Department of Education.~~]

(b) Each local school district [~~that employs emergency substitute teachers~~] shall report by June 30 of each year on forms provided by the Office of Teacher Education and Certification [~~Superintendent of Public Instruction~~] the number of days of substitute teaching performed by each emergency teacher.

(5) The Office of Teacher Education and Certification [~~Superintendent of Public Instruction~~] shall periodically report to the Education Professional Standards Board [~~State Board of Education~~] the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a) An emergency certificate for full-time or part-time employment shall be issued only to individuals who have attained a bachelor's degree from a regionally accredited college including a minimum grade point average of 2.5 on a 4.0 scale [~~shall be required for the issuance of an emergency certificate for employment in a full-time or part-time teaching position, effective with the 1988-89 academic year~~].

(b) An emergency certificate for substitute teaching shall be issued to individuals who have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution including a minimum grade point average of 2.0 on a 4.0 scale [~~shall be required for the issuance of an emergency certificate for employment in a substitute teaching position~~].

(c) An emergency certificate for substitute teaching in any health, technical, or industrial occupation may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

(7) An application form signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

JANICE WEAVER, Chair

APPROVED BY AGENCY: March 2, 1993

FILED WITH LRC: March 4, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 28, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 23, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564 4606.

REGULATORY IMPACT ANALYSIS

Contact person: Akeel Zaheer

(1) Type and number of entities affected: 176 public school districts and approximately 80 emergency and 7,000 emergency substitute teachers annually.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs involved in recruiting qualified emergency and emergency substitute teachers and recommend them for certification. Costs to candidates for tuition monies to earn required college credit to qualify for certification.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N\A

(b) Reporting and paperwork requirements: Recommending school districts must process and forward applications to the KDE and maintain records on candidates they recommend.

(2) Effects on the promulgating administrative body: Division of Certification must review applications, issue or deny certificate, and maintain records on all transactions.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates and related recordkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Certification must maintain records and issue certificates.

(3) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 161.100 requires the Education Professional Standards Board to establish the qualification requirements for individuals who may be recruited to school positions when an appropriately qualified person is unavailable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:198. Director of special education.

RELATES TO: KRS 157.250, 161.020[~~, 161.025~~], 161.030

STATUTORY AUTHORITY: KRS 157.250, 161.020, 161.028, [~~156.070,~~] 161.030

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025, and 161.030~~] requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education~~]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established [~~recommended~~] by the Education Professional Standards Board [~~council and approved by the state board~~]. This administrative regulation establishes (1) the director of special education [~~an appropriate~~] certificate, (2) the program approval standards for the preparation-certification program for directors of special education, and (3)

identifies acceptable certificates for individuals who may serve in a position which supervises, directs, administers, or coordinates special education programs. [~~which shall also be valid for the position of teacher consultant for special education, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation Certification of Professional School Personnel.~~

~~Section 1. (1) The endorsement for director of special education shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education regulations to an applicant who holds a provisional certificate for any category of special education, has completed at least three (3) years of experience as a teacher or teacher consultant of which two (2) years are in special education, and who in addition thereto, has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation Certification of Professional School Personnel, as adopted by 704 KAR 20:005, TEC 69.0, Section 1. The approved program shall consist of forty five (45) semester hours of credit above the bacheler's degree level and shall include a master's degree or planned fifth year program in special education.~~

~~(2) The endorsement for director of special education shall have the same duration period as the base certificate.~~

~~(3) The endorsement for director of special education shall be valid for the position of teacher consultant for special education or director of special education.~~

~~(4) Effective with the fall term of the 1990-91 academic year, teacher education institutions shall not admit applicants to the program of preparation for the endorsement for director of special education as described in subsections (1), (2), and (3) of this section; instead, applicants shall apply for admission to the preparation program for the professional certificate for director of special education. Persons admitted to the preparation program for the endorsement for director of special education shall complete the program by September 1, 1992.~~]

Section 1. [~~2.~~] (1) The [~~A~~] professional certificate for director of special education shall be issued in accordance with the pertinent Kentucky statutes and [~~State Board for Elementary and Secondary Education~~] administrative regulations of the Education Professional Standards Board to an applicant who has satisfied the prerequisites and who has completed an [~~the~~] approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel and set forth in either Section 4 or 5 of this administrative regulation [~~, as adopted by 704 KAR 20:005, TEC 69.0, Sections 2 and 3~~].

(2) The professional certificate for director of special education shall be issued for a duration period of five (5) years (except as provided in Section 2(1) or 5 of this administrative regulation) and may be renewed for subsequent five (5) year periods based upon completion by September 1 of the year of expiration of two (2) years of successful experience as a director of special education or three (3) semester hours of additional graduate credit related to the position of the director of special education, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) Any persons whose job duties, regardless of job title, include supervising, directing, administering, or coordinating special education programs for the 1988-89 academic year without an appropriate certificate under this administrative regulation may be approved for 1989-91. [~~, and~~] Such may be extended for 1991-93 upon completion by September 1, 1991, of forty-two (42) participant hours of instruction relevant to the role of the director of special education as determined by the Kentucky Department of Education [~~Office of Education for Exceptional Children~~] or upon completion of one-half (1/2) of the approved curriculum standards for the professional certificate for director of special education. The approval may be extended for the same duration period as the base teaching certificate upon completion of another forty-two (42) participant hours to be completed by September 1, 1993, or completion of the approved curriculum standards for the professional certificate for director of special education. The forty-two (42) participant hours may also satisfy the requirement for the Effective Instructional Leadership Act, KRS 156.101.

(4)[~~(a)~~] All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level, other than those approved under the provisions of subsection (3) of this section, shall be required to hold one (1) of the following:

(a) [~~1.~~] The endorsement for director of special education;

(b) [~~2.~~] The professional certificate for director of special education;

(c) [~~3.~~] The endorsement for supervisor of special education;

(d) [~~4.~~] The endorsement for teacher consultant for special education; or

(e) [~~5.~~] A certificate valid for supervisor of instruction for persons serving in such positions on July 14, 1992, as provided by KRS 157.250.

(f) Persons who hold a certificate valid for supervisor of instruction and are appointed after July 14, 1992, must comply with the requirements of Section 5 of this administrative regulation. The provisions of this paragraph will expire on September 1, 1996.

[~~(b) The superintendent of a school district who is the designated supervisor, director, administrator or coordinator of the district wide special education program for the school district would not be required to hold the specific certification identified in paragraph (a) of this subsection.~~]

Section 2. [~~3.~~] (1) If a person with qualifications identified in Section 1 [~~2~~] of this administrative regulation is not available for the position of director of special education the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) [~~one (1)~~] year period for an applicant who meets the following:

(a) A valid Kentucky certificate for teachers of exceptional children;

(b) A master's degree;

(c) Three (3) years of full-time experience teaching exceptional children; and

(d) Completion of a course in special and regular education case law.

(2) The applicant shall complete the total curriculum for the professional certificate for director of special education by September 1 of the year of expiration.

Section 3. Prerequisites for the Professional Certificate for Director of Special Education shall include the following:

(1) The applicant shall hold a valid Kentucky certificate for teachers of exceptional children or for school psychologist.

(2) The applicant shall have completed three (3) years of experience as a teacher of exceptional children and/or three (3) years of experience as a school psychologist.

Section 4. The program of preparation for the Professional Certificate for Director of Special Education shall include forty-five (45) semester hours of credit to include a master's degree or planned fifth-year program and a minimum of fifteen (15) semester hours of graduate level credit, except as reduced in subsection (6) of this section, to include the following:

(1) Introduction to exceptional persons.

(2) Special and regular education law and case law.

(3) Special education leadership and administration shall include: a study of roles and responsibilities of special education leadership including program planning, compliance with laws, proposal writing, grant management, accreditation reports, self study and evaluation techniques, school and community activities, and public relations.

(4) Consultation and supervision techniques shall include: consulting and supervisory services; recruitment, selection, and utilization of support services; evaluation of personnel and programs; staff development; and mediation techniques.

(5) Principles of educational administration shall include: a study of the historical development of educational administration, administrative processes; application of theory and values in decision making; and an introduction to modern management methods applied to education.

(6) A practicum of at least six (6) semester hours in consultation and special education administration shall include: supervised experiences in providing consultation services to programs for exceptional children and regular education; experiences with policies and procedures; recordkeeping systems and reports; utilization of support personnel and services; and modern technology in education. On basis of three (3) years of experience as a teacher of exceptional children, the practicum may be reduced to three (3) semester hours.

(7) A minimum of seventy-five (75) clock hours of observation and participation in classrooms for exceptional children (for candidates who do not have experience as a classroom teacher of exceptional children).

Section 5. In accordance with Section 1(4)(a)6 of this administrative regulation, persons employed by a local school district in an assignment which includes supervising, directing, administering, or coordinating special education programs at the districtwide level, and hold a valid certificate for supervision of instruction shall be issued a one (1) year Professional Certificate for Director of Special Education under the following conditions:

(1) The individual must provide evidence of being enrolled in a program of preparation which shall include the program outlined in Section 4 of this administrative regulation and in addition, coursework which includes special education instructional methods, materials and programs including preschool special education.

(2) The one (1) year Professional Certificate for Director of Special Education may be renewed for additional one (1) year periods on completion by September 1 of the year of expiration of nine (9) semester hours selected from subsection (1) of this section.

(3) On completion of the program of preparation outlined in subsection (1) of this section the certificate shall be extended for the remainder of the usual five (5) year duration period and renewed in keeping with Section 1(2) of this administrative regulation.

JANICE WEAVER, Chair

APPROVED BY AGENCY: March 2, 1993

FILED WITH LRC: March 4, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 28, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 23, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564 4606.

REGULATORY IMPACT ANALYSIS

Contact person: Akeel Zaheer

(1) Type and number of entities affected: 176 school districts and approximately 176 persons who serve in school districts as districtwide directors, supervisors, and coordinators of special education programs. Approximately 25 candidates annually who seek certification as directors of special education. Institutions of higher education which offer preparation programs.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs to school districts related to recruiting appropriately certified individuals for the positions identified above. Costs to individuals in acquiring appropriate certification and completing necessary coursework.

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: Candidates must file appropriate applications and local district maintain records on personnel qualifications.

(2) Effects on the promulgating administrative body: Division of Certification must review applications, issue or deny certificate, and maintain records on all transactions.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates and related recordkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Certification must maintain records and issue certificates.

(3) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the educational, emotional, and physical welfare of public school children.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:320. Beginning teacher internship program.

RELATES TO: KRS 161.028, 161.030

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

NECESSITY AND FUNCTION: KRS 161.030 requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform statewide procedures and processes necessary to carry out the intent of the legislation.

Section 1. Kentucky Teacher Internship Program Model. (1) Inasmuch as several states have adopted or are in the process of adopting plans similar to the teacher internship as provided in KRS

161.130, it is considered advisable that these states share in communication, materials, and research data relating to the internship. Accordingly, the Education Professional Standards Board [~~Superintendent of Public Instruction~~] may enter into formal and informal agreements with other states to promote a cooperative approach that will serve to enhance the efforts that Kentucky might otherwise make alone.

(2) A Kentucky plan for the supervision, assistance, and assessment of teacher interns shall be developed by the Education Professional Standards Board [~~Superintendent of Public Instruction, for approval by the State Board of Education,~~] and continuously improved, using whatever resources are available, both in state and out of state. Whenever documents, instruments, video, or other materials have been developed in other states and then adopted or adapted for use in Kentucky appropriate references shall give credit for the source.

(3) The Kentucky plan shall be characterized as a professional judgment model in that the statutes provide for the three (3) member teacher internship committee to make the professional judgment as to whether the performance of the teacher intern has been satisfactory or unsatisfactory.

Section 2. (1) In arriving at its professional judgment, the teacher internship committee shall take into consideration the progress of the teacher intern throughout the entire school year and, particularly, the level of performance that has been achieved near the end of the school year. The teacher internship committee shall determine the progress and improvement of the teacher intern pursuant to KRS 161.030, by a systematic observation of classroom performance, by a review of portfolio materials that are accumulated by the teacher intern as requested by the teacher internship committee, and by a review of the response of the teacher intern to the suggestions and recommendations made by the teacher internship committee during its meetings with the intern throughout the period of internship.

(2)(a) As a significant part of the process, the teacher internship committee shall utilize the performance measurement system that has been developed in Kentucky which emphasizes observation of teacher behaviors in a series of instructional domains that have been identified through extensive analysis of the research literature. The data derived from the performance measurement system shall be used to reinforce the appropriate behaviors of the teacher intern and to assist the teacher intern in recognizing behaviors that are ineffective or counterproductive for pupil learning. The data from the current performance measurement system shall be utilized as a focus for assistance from the resource teacher.

(b) The Kentucky Teacher Internship Program (KTIP) is incorporated herein by reference and identified as including the following documents:

1. [~~(a)~~] Domains: Kentucky Teacher Internship Program, Concepts and Indicators of Effective Teaching, May, 1989;

2. [~~(b)~~] Domains: Knowledge Base of the Kentucky Teacher Internship Program, May 1989; and

3. [~~(c)~~] Manual for Coding Teacher Behavior with the Kentucky Teacher Internship Program Classroom Observation Instrument, May, 1989.

These documents shall be applied by the Division of Testing and Internship, Kentucky [~~Teacher Education and Certification, State~~] Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. (1) The three (3) member teacher internship committee shall be composed [~~made up~~] of three (3) persons who have successfully completed Kentucky Teacher Internship program training. The committee shall consist of the school principal, a resource teacher, and a teacher educator.

(2) The school principal shall serve as ex officio chairperson of the teacher internship committee and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. Internship for teacher interns identified in 704 KAR 20:310 shall be administered by the Office of Teacher [~~Vocational~~] Education and Certification, Division of Testing and Internship. The principal shall be responsible for collecting and filing such reports of the internship as are required by the Department of Education. In the event that more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a school principal, but such an assistant principal shall fully report and document teacher internship committee meetings and teacher observations to the school principal. In unusual situations the Education Professional Standards Board [~~Superintendent of Public Instruction~~] may permit the assistant principal to serve in lieu of the principal on a teacher internship committee.

(3)(a) The resource teacher shall spend a minimum of seventy (70) hours working with the teacher intern; twenty (20) of these hours shall be observing the teacher intern in the classroom setting; fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings.

(b) The employing local school district shall recruit a pool of resource teachers to complete the special training in supervision and assessment of the performance of beginning teachers who meet the statutory requirements of having completed at least four (4) years of successful teaching experience as attested by his or her immediate supervisor or by having achieved tenure, and by having achieved a master's degree or the equivalent Rank II nondegree program or the accumulation of 2,000 hours of continuing professional activities.

(c) The resource teacher shall be appointed by the Education Professional Standards Board. [~~Superintendent of Public Instruction from a pool of qualified resource teachers who meet the statutory requirements of having completed at least four (4) years of successful teaching experience as attested by his or her immediate supervisor or by having achieved tenure, and by having achieved a master's degree or the equivalent Rank II nondegree program or the accumulation of 2,000 hours of continuing professional activities. The Department of Education shall also give priority~~] In the selection of resource teachers priority shall be given to those who have the same certification as a teacher intern and also in the order of priority teachers located in the same school, teachers located in the same school district, and teachers located in an adjacent school district. Prior to making the appointment the Department of Education shall determine the availability and willingness of persons to serve as resource teachers [~~and for taking the prerequisite training~~]. Within these stated requirements, the resource teacher shall be selected and assigned on a random basis; however, the Education Professional Standards Board [~~Superintendent of Public Instruction~~] should consult with the superintendent of the local district which employs the resource teacher before making the appointment.

(4) The teacher educator member shall be designated by the Department of Education from a list of teacher educators appointed by the presidents of each state approved teacher training institution. Teacher training institutions shall be encouraged to provide teacher educator members in the approximate proportion of the number of teacher education graduates produced the previous year. The Department of Education shall consult in advance with representatives of the teacher training institutions with respect to the school districts and the geographical area to be served by teacher educators from each teacher training institution. In the event that a teacher educator is not available to serve on a teacher internship committee, the local district superintendent shall appoint an instructional supervisor, from the school district who has received special training in evaluating and assisting teachers to serve in lieu of the teacher educator.

(5) Each principal of a school in which a teacher intern is employed and each member of the teacher internship committee shall engage in the special training in evaluating and assisting teachers

provided by the State Department of Education. The cost of training for the teacher internship committee members, shall be reimbursed by the State Department of Education in accordance with state travel regulations. The training for the resource teachers shall ordinarily be scheduled before the opening of the school term. The training for teacher educator members will be scheduled through the various teacher education institutions. Training for vocational teacher educators shall be administered by the Office of Teacher [~~Vocational~~] Education and Certification, Division of Testing and Internship [~~, State Department of Education~~].

Section 4. (1)(a) The teacher internship as described in KRS 161.030 shall take place in a school that is accredited by the Kentucky State Board for Elementary and Secondary Education and shall ordinarily occur during the first year of employment.

(b) The intern teacher shall be a full-time employee or shall serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship.

(c) As a condition for issuing the one (1) year certificate for teacher internship, the Education Professional Standards Board [~~teacher intern~~] shall identify the specific teaching assignment including the school, the school district, and the school principal.

(d) The one (1) year internship may be completed during either:

1. Two (2) semesters of no less than seventy (70) days each of classroom teaching in one (1) or more school years; or

2. No less than 140 [~~Only blocks of time of one (1) semester to include a minimum of seventy (70)~~] days of teaching in the classroom during a school year [~~may apply toward the one (1) year internship requirement~~].

(e) A teacher internship committee shall be established for each teacher intern whose initial employment begins at any time during the school term except when the date of employment does not allow for the completion of at least seventy (70) days of classroom teaching during a semester or 140 days of classroom teaching during a school year [~~in the remainder of the school term~~].

(f) In such instances where the remaining period of employment is less than seventy (70) days and, consequently, less than the amount of time required to satisfy a semester of internship, the local school district may declare an emergency in keeping with KRS 161.100 authorizing the superintendent to apply for an emergency teaching certificate and shall be responsible for providing assistance and supervision to the teacher [~~intern~~] for that period of employment.

(2) The Department of Education shall prepare a handbook describing the internship process as delineated in these administrative regulations and shall provide copies to the teacher intern and to each member of the beginning teacher committee. The names of the members of the teacher internship committee will be provided to the teacher intern.

(3) The teacher internship committee chairperson shall work out the following meeting schedule. The first meeting, shall be held for the purpose of providing an orientation to the internship program as it affects the teacher intern and the committee. (The principal resource teacher and teacher intern shall be present at the orientation meeting. The presence of the teacher educator is optional for the first meeting only.) The first meeting shall be held prior to any observations. On full-year assignments the second meeting, which shall follow the first set of observations, shall be held within sixty (60) instructional days [~~by November 15~~]; the third meeting, which shall follow the second set of observations, shall be held within 120 instructional days [~~by February 15~~]; the fourth meeting, which shall follow the third set of observations, shall be held within 140 instructional days. [~~by April 10. In situations where the employment of the teacher intern begins later than the usual opening of the school term in the district, the schedule shall be adjusted appropriately by the school principal. In instances where the teacher internship is scheduled for less than the full term, provisions shall be made for the orientation meeting and at least one (1) set of observations and the subsequent teacher internship committee meeting.~~]

(4)(a) Prior to the second, third and fourth meetings of the teacher internship committee each member shall make an observation visit of at least one (1) hour or one (1) class period in duration in the classroom or at the work station of the teacher intern. Additional observation visits prior to the final meeting or at other times, shall be optional with the committee. As a general guide such visits shall be scheduled a week in advance so that the teacher intern may be well prepared.

(b) At the first meeting of the teacher intern committee, there shall be a review of the process and materials used for the observations, the establishment of expectations on the part of the beginning teacher intern and on the part of each of the committee members, a general outline or schedule for the events to take place during the internship program, information regarding how the KTIP observation data will be used to strengthen the teacher intern's professional development plan (PDP), and suggestions for the work of the resource teacher with the teacher intern.

(c) The PDP shall be initiated at the second committee meeting. In addition, the teacher intern shall begin establishing the portfolio at the second committee meeting. At the third and fourth committee meetings there shall be a review of progress based upon a combination of the observation visits and the reports of the resource teacher and of the intern teacher as related to progress on the PDP and the intern's portfolio.

(d) At the third meeting there shall also be a restatement of expectations for the performance of the teacher intern, a restatement of suggestions of the committee members for the assistance by the resource teacher and resulting modifications in the PDP.

(e) At the final meeting the committee shall render a professional judgment with respect to the teacher internship.

(5)(a) The decision of the teacher internship committee as to satisfactory completion of the internship shall be reported to the local school superintendent or other employer and to the State Department of Education by April 15. If the teacher internship committee feels that a person not satisfactorily completing the internship could benefit from a second year of internship, if hired by the same or a different district, it may attach to its decision the mitigating or extenuating circumstances contributing to unsatisfactory completion which the committee reasonably feels might allow the teacher intern to satisfactorily complete a second year of internship.

(b) If the teacher intern is initially employed for the second semester of a school year, a progress report based upon the orientation meeting and at least one (1) set of observations of the committee members and the subsequent committee meeting shall be given to the local school superintendent and to the State Department of Education by May 15.

(6) If a teacher intern's first year of performance is judged by the committee to be unsatisfactory by reason of unsatisfactory performance, the teacher intern shall have the opportunity to repeat the internship during another year provided the teacher intern is employed by a school district within the next three (3) school years. If such employment is not obtained, the teacher intern must requalify by meeting the requirements as [~~passing the National Teacher Examinations~~] or the examinations stipulated in 704 KAR 20:305 and 704 KAR 20:310 and obtaining a new statement of eligibility for certification.

(7) Teacher interns who have completed only one (1) satisfactory semester of internship shall have the opportunity to continue the internship with employment for a semester during another school year provided the teacher intern is employed by a school district; however, if such employment is not obtained within the next three (3) school years, the teacher intern must requalify for admission to the remaining internship by meeting the requirements as [~~again passing the National Teacher Examinations or the examinations~~] stipulated in 704 KAR 20:305 and 704 KAR 20:310.

Section 5. (1) Within the provisions of the budgetary act the

Department of Education shall contract with the local school district, or make other appropriate arrangements[, ~~and the Office of Vocational Education shall reimburse state-operated vocational schools,~~] district for the direct services of the resource teachers to each teacher intern and in addition for participation in committee supervision and assessment meetings. Such contract shall provide for extra service payments above and beyond the provisions of the local salary scale for work done outside normal working hours and shall not exceed the amount of $1,000 for a year of service as a resource teacher. Any services for less than one (1) year shall be reimbursed on a pro rata basis for the actual services performed. The contract shall also provide for the employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist in the classroom of the teacher intern.

(2) The Department of Education shall contract with the colleges and universities for partial reimbursement of travel expenses and staff time. Each institution shall make its own determination as to the assignment of personnel and reimbursement for travel expenses.

Section 6. Complaints relative to failure of the teacher internship committee to comply with and follow all prescribed statutory and regulatory requirements and procedures in assisting and assessing a teacher intern shall be directed to, and assessed by, the Department of Education which shall, whenever practical, make a determination thereon within sixty (60) days following the receipt of each complaint.

JANICE WEAVER, Chair

APPROVED BY AGENCY: March 2, 1993

FILED WITH LRC: March 4, 1993 at 10 a.m.

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Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564 4606.

REGULATORY IMPACT ANALYSIS

Contact person: Dr. Teresa Bowling

(1) Type and number of entities affected: All beginning teachers eligible for the teacher internship program.

(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): N\A

(b) Reporting and paperwork requirements: Each beginning teacher eligible for the internship program is required to complete 140 instructional days of teaching. Intern committee members adhere to statutes, regulations, and guidelines in reporting to the Office of Teacher Education and Certification, Division of Testing and Internship.

(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: Review and process committee reports for successful and unsuccessful interns, maintain appropriate records, and disseminate relevant information.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable; no alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Internship requirements are uniformly applicable to all eligible beginning teachers.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Proposed Amendment)

704 KAR 20:510. Recruitment plan for teachers of exceptional children.

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

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

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025,~~] and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification and approved by the State Board of Education~~]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted [~~recommended~~] by the Education Professional Standards Board [~~Council and approved by the State Board~~]. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. If a qualified [~~fully certified~~] teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued as provided in this administrative regulation. For purposes of this administrative regulation "qualified" shall mean a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

(1)(a) A valid classroom certificate or internship statement of eligibility for grades K-4, 1-8, or 5-8 shall be a prerequisite for a one (1) year certificate for learning and behavior disorders, grades K-12; for trainable mentally handicapped, grades K-12; for hearing impaired, grades K-12; and for an endorsement for teaching the visually impaired, grades 1-8. Further, the applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed a [~~the following~~] minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum. [:

~~1. For the 1988-89 academic year, a minimum of six (6) semester hours of credit;~~

~~2. For the 1989-90 academic year and thereafter, a minimum of nine (9) semester hours of credit.~~]

(b) A valid classroom certificate or internship statement of eligibility for grades 7-12 or 9-12 shall be a prerequisite for a one (1)

year certificate for learning and behavior disorders, grades 7-12 and for an endorsement for teaching the visually impaired, grades 7-12. Further, the applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and a [~~the following~~] minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum. [:

~~1. For the 1988-89 academic year, a minimum of six (6) semester hours of credit;~~

~~2. For the 1989-90 academic year and thereafter, a minimum of nine (9) semester hours of credit.~~]

(2) The applicant shall complete twelve (12) clock hours of training as required [~~participate in two (2) day workshop to be conducted~~] by the Office of Special Instructional Services. [~~Education for Exceptional Children (OEEC). This workshop shall be conducted during a weekend period, arranged on a regional basis, and offered a minimum of two (2) times during each school year. Participation shall be required at the earliest session scheduled after employment as a teacher of exceptional children.~~]

(3) The applicant shall complete an additional six (6) clock hours of training during the [~~participate in an additional two (2) day workshop to be conducted by OEEC in conjunction with the OEEC~~] fall conference conducted by the Division of Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) hours of training during [~~participate in~~] the spring conference of the Council for [~~on~~] Exceptional Children.

Section 2. The renewal of the one (1) year certificate for teachers of exceptional children shall require completion of six (6) semester hours of additional credit from the special education component to be completed by September 1 or the year of expiration.

Section 3. Three (3) years of teaching experience performed under a succession of one (1) year certificates in a full-time position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

[~~Section 4. This regulation shall become effective for those to be certified for the 1988-89 academic year and thereafter.~~]

JANICE WEAVER, Chair

APPROVED BY AGENCY: March 2, 1993

FILED WITH LRC: March 4, 1993 at 10 a.m.

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Contact Person: Dr. Traci Bliss, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, (502) 564 4606.

REGULATORY IMPACT ANALYSIS

Contact person: Akeel Zaheer

(1) Type and number of entities affected: 176 school districts and approximately 450 individuals annually who receive certification as teachers of exceptional children under this plan.

(a) Direct and indirect costs or savings to those affected:

1. First year: Public school districts would incur costs of recruiting appropriately qualified individuals and prepare and transmit applications for certification of these individuals. Individuals being certified would incur costs for tuition to acquire the required college preparation to qualify.

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: Recommending school districts must process and forward applications to the KDE and maintain records on candidates they recommend.

(2) Effects on the promulgating administrative body: Division of Certification must review applications, issue or deny certificate, and maintain records on all transactions.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates and related recordkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Certification must maintain records and issue certificates.

(3) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the educational, emotional, and physical welfare of public school children.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 20 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients. [~~Recent changes in the~~] Federal guidelines for imposition of an order of selection necessitate [~~a similar change in~~] state policies and practices as a condition for continuation of federal funding. KRS Chapter 13A requires that those policies and practices be promulgated as administrative regulations.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Telecommunications, sensory, and other technological aids and devices;

(g) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(h) Postemployment services;

(i) Tuition and initial registration fees for training beyond the baccalaureate level;

(j) Interpreter services for individuals who are deaf except as provided in subsection (2)(f) of this section;

(k) Reader services for individuals who are blind;

(l) Rehabilitation technology [~~engineering~~] except as provided in subsection (2)(e) and (f) of this section; and

(m) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of an employment outcome [~~employability~~].

(2) The following services shall be excluded from an economic needs test:

(a) Diagnosis and evaluation of rehabilitation potential;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Professional rehabilitation engineering services;

(f) Rehabilitation engineering devices necessary for assessment [~~evaluation~~] of rehabilitation potential;

(g) Communication assistance in the individual's native language, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.

(h) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(i) Adjustment training, driver training, on-the-job training: and

(j) Supported employment job coaching.

(3) Except as provided in 781 KAR 1:060, clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess household income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants, the agency shall implement the order of selection.

(1) A client previously declared eligible for vocational rehabilitation services shall not be affected when the agency implements an order of selection.

(2) The order of selection shall not be applicable for clients whose needs are for nonpurchased services only (counseling, guidance, placement, referral services, coordination of comparable benefits, or third party payments).

(3) The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated rehabilitation facilities or for services at contracted private not-for-profit rehabilitation facilities.

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals with disabilities.

(5) The order of selection shall not regulate the provision or authorization of diagnostic and evaluation services.

(6) All applicants shall be declared eligible or ineligible as appropriate on a timely basis.

(7) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(8) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(9) If the agency is unable to provide services to all eligible clients with severe disabilities [~~impediments to employment~~], eligible individuals with the most severe disabilities [~~impediments to employment~~] handicaps shall be served. If the department is unable to identify clients with the most severe disabilities [~~impediments~~], clients with severe disabilities [~~impediments to employment~~] shall be served on a first-applied, first-served basis established by date of application.

(10) Clients with nonsevere disabilities who are receiving nonpurchased services and who, due to unanticipated events, need purchased services, shall receive the necessary purchased services.

(11) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(12) The order of selection system shall have six (6) [~~five (5)~~] priority categories as follows:

(a) Priority I - eligible individuals with the most severe disabilities [~~impediments to employment~~].

(b) Priority Category II - eligible individuals with a severe disability [~~impediments to employment~~].

(c) Priority Category III - eligible public safety officers with a nonsevere handicap whose disability sustained in the line of duty.

(d) Priority Category IV - eligible individuals with a nonsevere disability that results in permanent functional limitations and who are served as part of a cooperative funding agreement.

(e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.

(f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: February 1, 1993

FILED WITH LRC: February 23, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1993, at 10 a.m. eastern time in the 9th floor conference room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by April 16, 1993 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: George Parsons, Division of Program Development, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings. Any savings realized would be redistributed in the form of services to a larger population of citizens with disabilities.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork requirement other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The department proposes to give a higher priority consideration to clients who are served through a cooperative funding agreement. Institutions providing cooperative funding will be more inclined to do so if given some assurance that their clientele will be given higher priority as a result of funding efforts. This funding mechanism will allow applicants and clients expanded choices and satisfy the federal mandate. The remaining changes are technical only and intended to assure that the order of selection administrative regulation is consistent with changes in the Federal Rehabilitation Act amendments of 1992.

TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:010. Licensing and classification of blasters.

RELATES TO: KRS 351.315, 351.325

STATUTORY AUTHORITY: KRS Chapter 13A, Chapter 47, 351.335

NECESSITY AND FUNCTION: KRS 351.315 requires the Department of Mines and Minerals to license blasters. This regulation establishes the licensing requirements and duties of a blaster to effect this law, and establishes the amount of fees to be consistent with those increased by Acts 1992, chapter 462, codified as KRS Chapter 47, Appendix A, Part I, K, 69, page 117.

Section 1. (1) The department shall have two (2) classifications of blasting licenses for each of which there shall be a separate test; one (1) termed "Kentucky Blaster's License," and one (1) termed "Limited Kentucky Blaster's License."

(2) Persons holding a Limited Kentucky Blaster's License shall not conduct a blasting operation in which more than five (5) pounds of explosives are used in a single charge.

(3) Persons applying for either a "Kentucky blaster's license" or a "limited Kentucky blaster's license" shall submit a nonrefundable application fee of forty (40) dollars with the prescribed application form. Upon successfully passing the examination and satisfying the experience requirement of KRS 351.315, a license shall be issued upon the payment of an additional fee of twenty-five (25) dollars.

(4) Each blaster shall be required to renew his license each year by application to the department, which application shall be accompanied by a fee of twenty (20) [~~ten (10)~~] dollars.

(5) If a licensed blaster is not in violation of any final administrative or court order concerning blasting-related matters at the time he makes application for renewal of his license, the department shall renew that license.

(6) [~~(4)~~] A blaster who fails to renew his Kentucky Blasters License within five (5) years of the expiration date of his last valid license shall be required to reapply for a license and retake the blasters examination in a manner established in KRS 351.315. Blasters not in the above category may have their licenses renewed

by paying to the department a sum equal to the annual renewal fees for the years of nonrenewal.

(7) [~~(5)~~] The commissioner may grant a thirty (30) day nonrenewable blaster's license to any person qualified under KRS 351.315(3) upon the payment of a twenty-five (25) [~~five (5)~~] dollar fee.

(8) [~~(6)~~] For the purpose of licensure, a blaster is:

(a) A person who makes any or all of the following decisions:

1. Decides hole size, spacing, or depth;
2. Decides total quantity of explosives;
3. Decides quantity of explosives in each hole;
4. Decides timing delays to be used.

(b) He shall also be present when the charge is detonated and either physically detonate the charge or give the order to detonate the charge.

(c) He shall complete and sign a record for each blast as required in KRS 351.360.

(9) [~~(7)~~] A licensed blaster shall not take any instruction on the activities described in subsection (8) [~~(6)~~] of this section from a person not holding a blaster's license if compliance with such instruction may result in an unlawful act or unlawful effect of the blast.

(10) [~~(8)~~] Anyone failing a blaster's examination may [~~not~~] retake the examination after [~~in less than~~] thirty (30) days without paying another application fee. A person failing the examination of a second time must resubmit his application form and pay the fee required in subsection (3) of this section.

(11) [~~(9)~~] Persons involved in seismic exploration of the subsurface geology and detonating explosives solely for the purpose of monitoring seismic waves generated by such a detonation must hold either a Kentucky Blasters License or a Limited Kentucky Blaster's License. The five (5) pound limitation in subsection (2) of this section may be waived for the purpose of seismic exploration based upon a written request to the department.

(12) [~~(10)~~] Persons engaged in blasting operations in oil production and detonating explosives for the purpose of enhancing oil production, cutting casing, or other similar purposes, where the explosives are placed in an oil well, must hold either a Kentucky Blaster's License or a Limited Kentucky Blaster's License. The five (5) pound limitation in subsection (2) of this section may be waived for the purpose of oil well shooting based upon a written request to the department. The use of shaped charges of less than ninety (90) grams weight to perforate casing or strata does not meet the definition of blasting operation and does not require either license.

(13) [~~(11)~~] Application for the reciprocal license described in KRS 351.315(3) shall be on a form furnished by the department and accompanied by a fee of sixty (60) [~~ten (10)~~] dollars.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
LARRY C. SCHNEIDER, Director

APPROVED BY AGENCY: March 12, 1993

FILED WITH LRC: March 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, April 29, 1993 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 24, 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: Larry Schneider, Kentucky Department of Mines and Minerals, P.O. Box 14080, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Schneider

(1) Type and number of entities affected: Annually, there are 200 to 300 new applicants for blaster's licenses, and approximately 3100 persons who renew their blaster's licenses. These people are affected by the increase in fees.

(a) Direct and indirect costs or savings to those affected: The increase in cost for an applicant for a blaster's license is $20, the increase for persons renewing a license is $10 per year, and the increase in cost for a person licensed in another state and receiving a reciprocal blaster's license is $50. Subsection (5) deals with departmental procedure and proposes no requirements that would incur costs to those affected. Subsection (10) would allow an applicant to retake the examination a second time without repaying the application fee resulting in a savings of $40 for those persons who fail the test once but pass upon retaking it.

1. First year: During the first year, the increase in costs would be as noted above, i.e., an applicant for a blaster's license would pay an additional $20, a person renewing a blaster's license would pay an additional $10, and a person licensed in another state and receiving a reciprocal blaster's license would pay $50 more.

2. Continuing costs or savings: During subsequent years the increase in costs would be the same as noted above, i.e., an applicant for a blaster's license would pay an additional $20, a person renewing a blaster's license would pay an additional $10, and a person licensed in another state and receiving a reciprocal blaster's license would pay $50 or more.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs. Since these fee increases apply uniformly to all licensed blasters, there should be no effect on competition.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements in this regulation. The application specified in subsection (3)(c) is already required by statute; this regulation specifies that it accompany the fee at the time the applicant takes the written examination.

(2) Effects on the promulgating administrative body: This amendment will have no effect upon the Department of Mines and Minerals, since the agency is currently issuing licenses subject to this regulation.

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings to the administrative agency.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: State revenues should increase approximately $38,000 per year based upon the increase in the fee structure.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods, the changes are to comply with the statutes cited above.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations, or policies.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Currently, the fees charged by this agency are set by the Biennial Budget as contained

in Appendix A of KRS Chapter 47. This amendment conforms the amounts of fees in the regulation to those mandated by the biennial budget. The amendment in subsection (5) requires that the department renew a blaster's license when the holder of that license is in the process of contesting a violation or appealing an order. Only after such actions are final may the department refuse to renew a license when its holder remains in violation. Subsection (10) permits an applicant to retake the examination once without resubmission of application and paying the application fee again.

TIERING: Was tiering applied? No. Tiering is not used in this amendment since no fair distinction can be made for individuals applying for or renewing a blaster's license, nor does the statute contain provisions for any nonuniform fees.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:070. Definitions.

RELATES TO: KRS 351.315, 351.330, 351.335, 351.350[~~, 351.990~~]

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives [~~and unassembled components of explosives~~], and the maintenance of such explosives which has a direct bearing on safety to life and property. This administrative regulation provides the definitions applicable to [~~effects~~] the provisions of that law.

Section 1. [~~Definitions Applicable to 805 KAR 4:070 to 805 KAR 4:150. (1) "American Table of Distances" (also known as Quantity Distance Tables) means "American Table of Distances for Storage of Explosives" as revised and approved by the Institute of the Makers of Explosives, June 5, 1964.~~

~~(2) "Approved storage facility" means a facility for the storage of explosive material conforming to the requirements of this part and covered by a license or permit issued under authority of the Internal Revenue Service (See 26 CFR Part 181).~~]

(1) "Artificial barricade" means an artificial mound or revetted wall of earth of a minimum thickness of three (3) feet, or any other approved barricade that offers equivalent protection.

(2) "Barricaded" means the effective screening of a magazine containing explosive materials from another magazine, a building, a railway, or a highway, either by a natural or artificial barricade. To be properly barricaded, a straight line from the top of any sidewall of the magazine to the eave line of any other magazine or building, or to a point twelve (12) feet above the center of a railway or highway will pass through the barricade.

(3) "Blast area" means the area in which explosives loading and blasting operations are being conducted.

[~~(4) "Blaster" means the person or persons authorized to use explosives for blasting purposes and meeting the qualifications contained in 805 KAR 4:010.~~]

(4) [~~(5)~~] "Blasting agent" means any material or mixture consisting of a fuel and oxidizer used for blasting, but not classified an explosive and in which none of the ingredients is classified as an explosive provided the furnished (mixed) product cannot be detonated with a No. 8 test blasting cap when confined. [~~A common blasting agent presently in use is a mixture of ammonium nitrate (NH/4 NO/3) and carbonaceous combustibles such as fuel oil or coal, and may either be procured, premixed and packaged from explosive companies or mixed in the field.~~]

(5) [~~(6)~~] "Blasting cap" means a metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for [~~and capable of~~] detonation from the sparks or flame from a safety fuse inserted and crimped into the open end.

(6) [~~(7)~~] "Block holing [~~holding~~]" means the breaking of boulders by firing a charge of explosives that has been loaded in a drill hole.

(7) [~~(8)~~] "Conveyance" means any unit for transporting explosives or blasting agents, including but not limited to trucks, trailers, rail cars, barges, and vessels.

(8) [~~(9)~~] "Detonating cord" means a flexible cord containing a center core of high explosives which, when detonated, will have sufficient strength to detonate other cap-sensitive explosives with which it is in contact.

(9) [~~(10)~~] "Detonator" means blasting caps, electric blasting caps, delay electric blasting caps, and nonelectric delay blasting caps.

(10) [~~(11)~~] "Electric cap" means a blasting cap designed for and capable of detonation by means of an electric blasting current.

[~~(12) "Electric blasting circuitry" means:~~

~~(a) Bus wire. An expendable wire, used in parallel or series, in parallel circuits, to which are connected the leg wires of electric blasting caps.~~

~~(b) Connecting wire. An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.~~

~~(c) Leading wire. An insulated wire used between the electric power source and the electric blasting cap circuit.~~

~~(d) Permanent blasting wire. A permanently mounted insulated wire used between the electric power source and the electric blasting cap circuit.~~]

(11) [~~(13)~~] "Electric delay blasting caps" means caps designed to detonate at a predetermined period of time after energy is applied to the ignition system.

[~~(14) "Explosives" means:~~

~~(a) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the U.S. Department of Transportation.~~

~~(b) All material which is classified as Class A or Class B explosives by the U.S. Department of Transportation.~~

~~(c) Classification of explosives by the U.S. Department of Transportation as follows:~~

~~1. Class A explosives. Possessing detonating hazard, such as dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, blasting caps, and detonating primers.~~

~~2. Class B explosives. Possessing flammable hazard, such as propellant explosive, including some smokeless propellants.~~]

(12) "Flyrock" means any dirt, mud, stone, fragmented rock or other material that is displaced from the blast site by being thrown in the air or cast along the ground.

(13) "High explosives" means any material that will detonate when initiated by a blasting cap and where the chemical reaction proceeds at supersonic velocities and produces high temperature, high pressure gases and an associated shock wave.

(14) [~~(15)~~] "Fuse lighters" means special devices for the purpose of igniting a safety fuse.

(15) "Low explosives" are materials which deflagrate producing high temperature, high pressure gases. They may be initiated with a blasting cap, or by flame, heat or impact, however, they do not present a mass detonation hazard.

(16) "Magazine" means any building or structure, other than an explosives manufacturing building, used for the storage of explosives.

(17) "Misfire" means an explosive charge which failed to detonate.

(18) "Mud capping" (also [~~sometimes~~] known as bulldozing, adobe blasting, or dobying) means a method of [~~the~~] blasting [~~of boulders~~] by placing a quantity of explosives in contact with a [~~against a~~] rock, boulder, or other object without confining the explosives in a drill hole.

(19) "Natural barricade" means hills or timber of sufficient density

that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

(20) [~~(19)~~] "Nonelectric delay blasting cap" means a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal for miniaturized detonating cord.

[~~(20) "Primary blasting" means the blasting operation by which the original rock formation is dislodged from its natural location.~~]

(21) "Primer" means a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached.

(22) "Safety fuse" means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps.

[~~(23) "Secondary blasting" means the reduction of oversized material by the use of explosives to the dimension required for handling, including mud capping and blockholing.~~]

(23) [~~(24)~~] "Stemming" means a suitable inert incombustible material or device used to confine or separate explosives in a drill hole, or to cover explosives in mud capping.

(24) [~~(25)~~] "Springing" means the creation of a pocket in the bottom of a drill hole by the use of a moderate quantity of explosives in order that larger quantities of explosives may be inserted therein.

[~~(26) "Water gels, or slurry explosives" means a wide variety of materials used for blasting. They all contain substantial proportions of water and high proportions of ammonium nitrate, some of which is in solution in the water. Two (2) broad classes of water gels are:~~

~~(a) Those which are sensitized by a material classed as an explosive, such as TNT or smokeless powder; and~~

~~(b) Those which contain no ingredient classified as an explosive; these are sensitized with metals such as aluminum or with other fuels. Water gels may be premixed at an explosives plant or mixed at the site immediately before delivery into the borehole.~~]

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
LARRY C. SCHNEIDER, Director

APPROVED BY AGENCY: March 12, 1993

FILED WITH LRC: March 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, April 29, 1993 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 24, 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: Larry Schneider, Kentucky Department of Mines and Minerals, P.O. Box 14080, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Schneider

(1) Type and number of entities affected: The 3100 licensed blasters employed in the Commonwealth will be affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There will be no added costs or savings.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: There will be no effect on the Department of Mines and Minerals due to this regulation.

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings to the administrative agency.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the administrative agency.

(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: There are no acceptable alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations, or policies.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The purpose of the amendments deleting definitions is to remove those which are not referenced in any other applicable regulation or statute or which have been defined in the statute thereby making the regulatory definition redundant. Definitions are added as amendments for those terms used in the regulations and not adequately defined. In most cases, the most widely used definition in the blasting industry has been adopted. The definitions for "artificial barricade", "natural barricade", and "barricaded" are made in order to conform with existing federal laws regarding the storage of explosives.

TIERING: Was tiering applied? No. Tiering was not used since all definitions must be used consistently in all applicable regulations.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 1:010. Liability self-insurance groups.

RELATES TO: KRS 304.1-120, 304.39-080

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.39-300 provides that the Commissioner of Insurance may adopt reasonable administrative regulations to provide effective administration of KRS 304.39. This administrative regulation establishes minimum standards for liability self-insurance groups to assure that such groups are providing adequate coverage for professional or public liability risks, have established a comprehensive loss prevention and risk management program coordinated with an effective claims management system, and have provided the appropriate information to the Department of Insurance.

Section 1. [~~Scope. This regulation applies to liability self-insurance groups established or which have expanded the kinds of risks protected by such groups pursuant to KRS 304.1-120 on or after~~

~~July 15, 1986. Groups which are issued a certificate of filing by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the Kentucky Insurance Code and regulations except as provided in this regulation.~~

~~Section 2.~~] Definitions. (1) "Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a liability self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.

(2) "Bona fide association" as used in KRS 304.1-120 is an association which has a substantial noninsurance purpose or has other characteristics of stability in finances, membership, etc.

(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(4) "Deceptive" refers to an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.

(5) "Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.

(6) "Insolvent" or "insolvency" means the inability of a liability self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

(7) "Liability self-insurance group" means a group established pursuant to KRS 304.1-120(6).

(8) [~~"Person" has the meaning set forth in KRS 304.1-120.~~

~~(9)~~] "Qualified actuary" means a member of the American Academy of Actuaries or a fellow of the Casualty Actuarial Society.

(9) [~~(10)~~] "Service company" means a person or entity which provides services not provided by the administrator, including, but not limited to, claims adjustment, safety engineering, compilation of statistics in preparation of contribution and assessment, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.

(10) [~~(11)~~] "Unfair" refers to an act, practice, or statement which is unconscionable.

Section 2. Scope. This administrative regulation applies to liability self-insurance groups established or which have expanded the kinds of risks protected by such groups pursuant to KRS 304.1-120 on or after July 15, 1986. Groups which are issued a certificate of filing by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the Kentucky Insurance Code and administrative regulations except as provided in this administrative regulation.

Section 3. Filing With the Commissioner Required. No person shall act as a liability self-insurance group unless it has been issued a certificate of filing by the commissioner.

Section 4. Qualifications for Initial Filing and Continued Authority to Act as a Liability Self-insurance Group. (1) A proposed liability self-insurance group shall file with the commissioner its application for a certificate of filing accompanied by a nonrefundable filing fee of five (5) dollars. The application shall include the group's name, location of its principal office, date of organization, name and address of each member (if known at the time of application - if unknown, a description of the group to be solicited for membership), identification of its fiscal year, and shall be in the form set forth in Appendix A [~~such other information as the commissioner may reasonably require~~], together with the following:

(a) Proof of compliance with the provisions of subsection (2) of this section.

(b) A copy of the articles of association.

(c) If requested by the commissioner, a copy of agreements with the administrator and with any service company.

(d) A copy of the bylaws of the proposed group.

(e) A copy of the agreement between the group and each member jointly and severally binding the group and each member thereof to comply with the provisions of this administrative regulation and the decision of the trustees for operation of the liability self-insurance group. If the liability self-insurance group is composed of governmental entities and received its certificate of filing prior to July 29, 1992, the agreement may provide that it does [~~shall~~] not jointly and severally bind group members to pay the debts of others. Liability self-insurance groups may limit group members' joint and several liability, such limits to be established in terms of members' annual contributions.

(f) Designation of the initial board of trustees and administrator.

(g) The address where books and records of the group will be maintained at all times.

(h) A pro forma financial statement in the [~~on a~~] form of Appendix B [~~acceptable to the commissioner~~] showing financial ability of the group to pay the professional or public liability obligations of its members.

(2) To obtain and to maintain its certificate of filing a liability self-insurance group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including both known claims and expenses and incurred but not reported claims and expenses. If the commissioner is not satisfied with the financial strength of a liability self-insurance group, he may require any or all of the following:

(a) Liability self-insurance groups to provide security in the form and the amount prescribed by the commissioner as follows:

1. A surety bond issued by a corporate surety authorized to transact business in Kentucky; or

2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer may be used to meet all or part of the security requirement. The bond or financial security endorsement shall be for the benefit of the insured creditors solely to pay claims and associated expenses and payable upon the failure of the group to pay professional or public liability claims it is legally obligated to pay. The commissioner may establish and adjust from time to time the requirements for the amount of security based on differences among groups in their size, types or business, years in existence, or other relevant factors.

(b) Specific and aggregate excess insurance in a form, in an amount, and issued by an insurer acceptable to the commissioner.

(c) A liability self-insurance group to provide a fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the commissioner. The commissioner may also require the service company providing claim service to furnish a performance bond in a form and amount prescribed by the commissioner.

(3) A liability self-insurance group shall notify the commissioner immediately of any change in the information required to be filed under subsection (1) of this section or in the manner of its compliance with subsection (2) of this section.

(4) The commissioner shall issue to the liability self-insurance group a certificate of filing upon finding that the proposed group has met all requirements or the commissioner shall issue a written statement refusing such certificate, setting forth the reasons for such refusal.

(5) Any liability self-insurance group accepting a certificate of filing pursuant to this administrative regulation is deemed to have appointed the Secretary of State as its attorney to receive service of legal process issued against it in this state. Such appointment shall be irrevocable, shall bind any successor in interest, and shall remain

in effect as long as there is in this state any professional or public liabilities.

Section 5. Termination of Certificate of Filing. (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the commissioner pursuant to Section 16 of this administrative regulation.

(2) The commissioner shall not grant the request of a liability self-insurance group to terminate its certificate of filing unless the group has filed with the commissioner a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.

(3) Subject to filing with the commissioner, a liability self-insurance group may merge with another liability self-insurance group. As a result of any such merger, the resulting liability self-insurance group must assume in full all obligations of the constituent groups.

Section 6. Board of Trustees: Membership, Powers, Duties, and Prohibitions. (1) Each group shall be operated by a Board of Trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the liability self-insurance group. Except for liability self-insurance groups formed by governmental entities, the trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, such as [~~including, but not limited to,~~] assuring that there is adequate funding to cover professional or public liabilities, assuring that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.

(2) The Board of Trustees shall:

(a) Maintain responsibility for all moneys collected or disbursed from the group and segregate all moneys into a claims fund account and an administrative fund account.

(b) Maintain minutes of its meetings and make the [~~such~~] minutes available to the commissioner.

(c) Designate an administrator to carry out the policies established by the Board of Trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

(d) Retain an independent certified public accountant and a qualified actuary to prepare the statement of financial condition required by Section 9 of this administrative regulation.

(3) The Board of Trustees shall not:

(a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the commissioner.

(b) Permit the loan of any moneys to or borrow any moneys from the group or in the name of the group. However, a liability self-insurance group formed by governmental entities may borrow monies in the name of the group.

(4) In its discretion, the liability self-insurance group may refer to its trustees as directors. When this is done, the provisions of this administrative regulation referring to trustees shall be construed as referring to such directors.

Section 7. Group Membership, Termination, and Liability. (1) An employer joining a liability self-insurance group after the group has been issued a certificate of filing shall submit an application for membership to the Board of Trustees or its administrator and enter into the indemnity agreement required by Section 4(1)(e) of this administrative regulation. Membership takes effect no earlier than each member's date of application. The application for membership and its approval shall be maintained as permanent records of the Board of Trustees.

(2) Individual members of a liability self-insurance group shall be subject to cancellation by the group pursuant to the bylaws of the group. In addition, individual group members may elect to terminate their participation in the group.

(3) A liability self-insurance group shall pay all professional and public liabilities which are covered under the terms, conditions, and exclusions of the group's evidence of coverage for which each member incurs liability during its period of membership. Except as provided in Section 4(1)(e) of this administrative regulation [~~to liability self-insurance groups formed by governmental entities~~], a member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for professional or public liability obligations of the group and its members which were incurred during the cancelled or terminated group members' period of membership. A group member is not relieved of its professional or public liabilities incurred during its period of membership except through payment by the group or the member of liabilities.

(4) The insolvency or bankruptcy of a group member does not relieve the liability self-insurance group or any other group member of liability for the payment of professional or public liabilities which are covered under the terms, conditions and exclusions of the group's evidence of coverage and incurred during the insolvent or bankrupt group member's period of membership.

[~~(5) This section does not negate any statutes or judicial decisions limiting defenses.~~]

Section 8. Service Companies. (1) No service company or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect interest in, an administrator. No administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(2) This section does not apply to liability self-insurance groups formed by public entities.

Section 9. Financial Statements and Other Reports. (1) Each liability self-insurance group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before sixty (60) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in the form of Appendix B and shall [~~on a form prescribed by the commissioner and shall~~] include[~~, but not be limited to,~~] actuarially appropriate reserves for:

(a) Known claims and expenses associated therewith.

(b) Claims incurred but not reported and any expenses associated therewith.

(c) Unearned contributions and assessments.

(d) Bad debts, which reserves shall be shown as liabilities.

(e) An actuarial opinion by a qualified actuary and supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.

(f) An actuarial opinion by a qualified actuary and supporting reserve study regarding reserves for claims incurred but not reported and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.

(2) No person shall make any deceptive statement or fail to make any statement which would make a statement not deceptive in connection with the solicitation of membership of a group.

(3) For actuarial opinions rendered prior to the effective date of the 1993 amendment to this administrative regulation, the work papers and calculations of the qualified actuary shall be provided to the commissioner upon his request. [~~The commissioner may prescribe~~

~~the format and frequency of other reports which may include, but not be limited to, summary loss reports and quarterly financial statements.~~]

(4) Records of a liability self-insurance group shall be made freely available to the commissioner so that the commissioner may determine whether the group is in compliance with KRS 304.1-120(6) and this administrative regulation.

(5) The financial statements required by this section shall be completed.

(a) If the liability self-insurance group is not composed of governmental entities, in accordance with Financial Accounting Standards Board Statement Number 60, June, 1982, incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, Monday through Friday, ~~8~~ a.m. to 4:30 p.m. (ET); or

(b) If the liability self-insurance group is composed of governmental entities, in accordance with Government Accounting Standards Board Statement Number 10, November, 1989, incorporated by reference and available for inspection or copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

Section 10. Trade Practices. (1) No person shall make any materially deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.

(2) Unfair claims settlement practices. Liability self-insurance groups shall:

(a) Respond to claimant inquiries which reasonably suggest that a response is expected within fifteen (15) working days.

(b) Liability self-insurance groups shall respond to Department of Insurance inquiries concerning claims within fifteen (15) working days.

(c) Complete investigation of losses within thirty (30) days from the date the group has notice of a loss. Additional thirty (30) day periods may be taken if reasonably necessary and upon written notice to the claimant.

(d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which such time limit may expire that the time limit may be expiring and may affect the claimant's rights.

(e) Not commit any other unfair or deceptive act or practice relating to claim settlement.

(3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices under its certificate of filing from the commissioner.

Section 11. Investments. Funds not needed for current obligations may be invested by the Board of Trustees in investments recognized as sound investments.

Section 12. Rates and Underwriting Guidelines. Liability self-insurance groups shall file with the commissioner their rates, underwriting guidelines, evidence of coverage, and any changes therein prior to effectuation. The [~~Such~~] filings shall be accompanied by a five (5) dollar filing fee per filing [~~rate or guideline~~].

Section 13. Contribution and Assessment Payments; Reserves. (1) Liability self-insurance groups shall establish contribution and assessment payment plans.

(2) Liability self-insurance groups shall establish and maintain appropriate loss reserves which shall include reserves for:

(a) Known claims and expenses associated therewith; and

(b) Claims incurred but not reported and expenses associated therewith.

(3) Liability self-insurance groups shall establish and maintain bad debt reserves based on the historical experience of the group or other groups. The commissioner may waive this requirement for good cause shown.

Section 14. Deficits and Insolvencies. (1) If the assets of a liability self-insurance group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this administrative regulation, the group shall immediately levy an assessment upon its members for the amount needed to make up the deficiency.

(2) In the event of a deficiency in any fund year, the [~~such~~] deficiency shall be made up immediately, either from surplus from a fund year other than the current fund year, administrative funds, assessment of the membership, if ordered by the group, or [~~such~~] alternate methods as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

(3) If a liability self-insurance group fails to assess its members to make up such deficit within thirty (30) days, the commissioner shall order it to do so. This subsection does not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability under Section 4(1)(e) of this administrative regulation.

(4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which such assessment is made, or within such longer period of time as may be permitted by the commissioner, the group shall be deemed to be insolvent.

Section 15. Evidence of Coverage. (1) Every member of a liability self-insurance group shall receive written evidence of coverage by the group.

(2) All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.

(3) All evidences of coverage issued pursuant to this section, other than those issued by liability self-insurance groups formed by governmental entities which do not have joint and several liability under Section 4(1)(e) of this administrative regulation, shall contain the following disclosure in prominent, contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A LIABILITY SELF-INSURANCE GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION. GROUP MEMBERS MAY BE ASSESSED IN THE EVENT OF INSOLVENCY OF THE LIABILITY SELF-INSURANCE GROUP.

(4) All evidences of coverage issued pursuant to this section by liability self-insurance groups formed by governmental entities which have joint and several liability pursuant to Section 4(1)(e) of this administrative regulation, shall contain the following disclosure in prominent, contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A LIABILITY SELF-INSURANCE GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.

Section 16. Inclusion of Motor Vehicle Liability Coverage. (1) If the liability self-insurance group is formed by governmental entities and coverage is provided for motor vehicle liability, the group is not required to comply with 806 KAR 39:050, Self insurance, unless its members elect to become obligated governments for the payment of basic reparation benefits or are required by law to provide basic reparation benefits, in which case the group shall provide the security required by 806 KAR 39:050.

(2) If a liability self-insurance group formed by entities other than

governmental entities chooses to provide coverage for motor vehicle liability and basic reparation benefits, its application shall be analyzed under both this administrative regulation and 806 KAR 39:050 and authority to self-insure motor vehicle liability and basic reparation benefits coverages shall not be granted unless the group complies with this administrative regulation and 806 KAR 39:050.

(3) All applications for a certificate of filing shall state whether motor vehicle liability or basic reparation benefits coverages are to be covered by the group.

Section 17. Disciplinary Measures. (1) After a hearing or upon agreement by the liability self-insurance group, the commissioner may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to $5,000 per violation on a liability self-insurance group, or both, for:

(a) Violations of KRS 304.1-120 or this administrative regulation;

(b) Obtaining a certificate of filing by unfair or deceptive means;

(c) Operating in a financially hazardous manner;

(d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or

(e) Unfair or deceptive business practices.

(2) In his discretion and without advance notice or a hearing thereon, the commissioner may suspend or revoke the certificate of filing of any liability self-insurance group as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced.

~~[Section 18. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~

~~Section 19. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

APPENDIX A

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky 40601

APPLICATION FOR CERTIFICATE OF FILING
AS A LIABILITY
SELF-INSURANCE GROUP

1. Name of Applicant:
2. Address of principal office:
3. Address to which official communications should be mailed (if different from above):
4. Address where books and records of the group will be maintained:
5. The applicant is a (check one):
   ( ) Group or association of health facility and health services institutions.
   ( ) Group of Kentucky for-profit corporations.
   ( ) Bona-fide association.
6. Date and place of organization:
7. Date fiscal year ends:
8. Name and address of agent for service of process:
9. Is the group composed of governmental entities? (check one): ( ) Yes ( ) No
10. If question 9 was answered "yes," describe the governmental entities involved (attach additional pages if necessary).
11. Will the group have an administrator? (check one): ( ) Yes ( ) No
12. If question 11 was answered yes, give the name and address of the administrator:
13. State whether any member of the board of directors/trustees has any direct or indirect interest in an administrator or service company and describe such interest. (attach additional sheets if necessary):
14. Will the group provide coverage for basic reparation benefits or for liability arising from the use of motor vehicles pursuant to KRS 304.39? ( ) Yes ( ) No
15. Attach the following information:

a. The names and addresses of group members. If not known, describe the group who will be solicited.
b. A description of the professional or public liability risks to be covered by the group.
c. A description of the operation of the group's trust fund. This should include a description of the group's financial arrangements to cover the professional or public liability risks to be assumed by the group.
d. A copy of the articles of association or other charter documents of the group and any by-laws of the group.
e. A copy of the agreement between the group and each member to participate in the group.
f. Designation of the initial board of trustees/directors.
g. A pro forma financial statement showing financial ability of the group to pay the professional or public liabilities assumed by the group.

_____
(Name of Group)

by signing this registration, agrees to comply with all applicable provisions of Kentucky law, including, but not limited to, KRS 304.1-120(6) and 806 KAR 1:010.

Officer's Signature:
Officer's Name:
Officer's Title:
Date:

Return completed form to:
Financial Standards & Examination Division
Kentucky Department of Insurance
P. O. Box 517
Frankfort, Kentucky 40602
(502) 564-6082

APPENDIX B
(NAME OF LIABILITY SELF-INSURANCE GROUP)
FINANCIAL STATEMENTS AND SCHEDULES
(DATE)
WITH INDEPENDENT AUDITOR'S REPORT THEREON
(NAME OF LIABILITY SELF-INSURANCE GROUP)

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DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 23, 1993
FILED WITH LRC: March 3, 1993 at 11 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for April 21, 1993, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m (ET), on April 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts

Need for the proposed regulation: Recent weeks have raised questions as to the financial stability of liability self-insurance groups. Under KRS 304.1-120(6), certain groups are permitted to form liability self-insurance groups which are exempt from the provisions of the Insurance Code. In order to qualify for the exemption, a liability self-insurance group must establish a professional or public liability risk management trust fund to provide adequate coverage for claims made against members of the fund for professional liability or public liability risks, establish a comprehensive loss prevention and risk management program coordinated with an effective claims management system for members of the group, and file, on a form to be provided by the Department of Insurance, certification setting forth the establishment of the trust fund, the date upon which the trust fund is to become effective, the identity of the members of the trust fund, and a copy of the programs and systems established for the members. In OAG 92-124, it was stated that the Commissioner of Insurance has authority to promulgate administrative regulations requiring liability self-insurance groups to provide all information which the Commissioner of Insurance finds reasonably necessary to determine whether a liability self-insurance group is qualified for an exemption from the Insurance Code under KRS 304.1-120(6). The opinion further states that there is no legal prohibition against a liability self-insurance group composed of governmental entities operating on an assessment basis. The proposed amendment does five (5) things: 1. Provides that liability self-insurance groups composed of governmental entities must do business on an assessment basis, although groups in existence prior to the date of issuance of OAG 92-124 are "grandfathered" and may, but are not required to, have an assessment feature. 2. The records of a liability self-insurance group are required to be made freely available to the Commissioner of Insurance for use in determining whether the group qualifies for an exemption from the Insurance Code, and a group's actuary must not only give an opinion as to reserve adequacy, but also provide a reserve study supporting the opinion. As to opinions given prior to the effective date of the amendment, the group must make available to the Commissioner the records relied on by the actuary to give an opinion on reserve adequacy. 3. Accounting standards must be met in financial reports filed with the Department of Insurance. 4. The evidence of coverage which the liability self-insurance group gives to members is required to be filed with the Commissioner of Insurance. 5. Technical changes required by the provisions of KRS Chapter 13A are also made.

(1) Type and number of entities affected: There are four (4) liability self-insurance groups which have received certificates of filing from the Commissioner of Insurance and are currently doing business in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: Groups which have not had their financial statements prepared in accordance with the accounting standards established in the proposed regulation will have to take steps to comply.

2. Continued cost or savings: Accounting standards must be met in providing financial statements every year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The accounting standards required by the proposed regulation may require additional record keeping and reporting if the group is not already in compliance with these standards. The evidence of coverage used by the group must be provided to the Commissioner of Insurance.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed regulation will reduce costs for the Department of Insurance because the proposed regulation makes it clear that liability self-insurance groups are to make records freely available to the Commissioner of Insurance so that it may be determined whether the group qualifies for an exemption from the Insurance Code. Due to the small number of liability self-insurance groups, the expense of maintaining records on the evidence of coverage used by groups will be minimal.

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 only alternative would be to try to determine whether groups qualified for an exemption from the Insurance Code based on the existing regulation. This was rejected because the Department of Insurance requested one group to provide documentation as to what the group's consulting actuary relied on in issuing an opinion that the group's reserves were adequate. The group refused to provide this information, citing the fact that it is not specifically required under the regulation.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

Tiering: Tiering is used in that different requirements (e.g., accounting standards) are used for groups composed of governmental entities and those groups which are not composed of governmental entities.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.010, 318.020, 318.040, 318.050, 318.054

NECESSITY AND FUNCTION: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This administrative regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations. This amendment is proposed to reduce the fees of licensed master and journeyman plumbers as agreed by the Plumbing Code Committee when operating funds were sufficient to carry out the plumbing program in the state. [~~necessary to increase the fees of licensed master and journeyman plumbers to a level sufficient to meet the costs of carrying out the plumbing program when taken together with permit fees in 815 KAR 20:050. This amendment was approved by the Plumbing Code Committee on February 24, 1992.~~]

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. Applications for examination for master or journeyman plumber's licenses shall be submitted to the Department of Housing, Buildings and Construction on forms furnished by the department. Each application shall be properly notarized and accompanied by a fee of $150 for a master plumber's license or fifty (50) dollars for a journeyman plumber's license. A signed photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years shall accompany each application. Application fees shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for master or journeyman plumber's licenses shall be conducted during the months of February, May, August and November of each year. Special examinations may be conducted at other times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to all persons having applications on file.

(3) Materials required for journeyman plumbers' examinations. Applicants for journeyman plumber's licenses shall furnish the materials required for the practical examination.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be $150 [~~250~~] for master plumbers and twenty-five (25) [~~forty (40)~~] dollars for journeyman plumbers.

(2) Remittance of renewal fees. Renewal fees shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Expiration, Renewal or Reinstatement of License. All licenses issued under KRS 318.040 shall expire on June 30 as prescribed in KRS 318.054.

Section 5. Requirements for Master Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a master plumber:

(1) The applicant possessed a valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application and has been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(2) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(3) All applicants shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant understands the Kentucky plumbing laws, is capable of the design of a plumbing system and understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, and preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(4) The passing grade for master plumbers shall be eighty (80) percent.

Section 6. Requirements for Journeyman Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a journeyman plumber:

(1) The applicant has completed two (2) consecutive years experience as an apprentice plumber. Proof of this requirement shall be satisfied by submission of a W-2 form, affidavit of a Kentucky licensed master plumber, or other proof of experience acceptable to the Department.

(2) The applicant successfully completes the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, as well as preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(3) The examination shall also include completing a practical section in which the applicant shall demonstrate ability to properly install plumbing by engaging in certain activities such as properly caulk a cast iron soil pipe spigot into a cast iron hub and soldering copper solder connections.

(4) The passing grade for journeyman plumbers shall be seventy-five (75) percent.

Section 7. All Master Plumbers and Journeyman Plumbers shall notify the department of the name of their business and its address, their employer and his address and any time a change of employment is made.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 22, 1993
FILED WITH LRC: March 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 27, 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 April 22, 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: Approximately 2,200 master plumbers and 4,200 journeymen plumbers licensed each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct savings each fiscal year to those affected will be as follows: Master plumbers - $220,000 (2,200 x $100); journeyman plumbers - $63,000 (4,200 x $15).

2. Continuing costs or savings: Cost will remain constant except as stated immediately below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increase or decrease will be in direct proportion to the increase or decrease in plumbers license issued.

(b) Reporting and paperwork requirements: Licensing procedures are in place and only forms will need to be revised.

(2) Effects on the promulgating administrative body: Revenue reducing amendment to meet approximately $283,000 of estimated $1,300,000 plumbing program funding surplus in each fiscal year.

(a) Direct and indirect costs or savings: Revenue producing with no impact on indirect savings or costs.

1. First year: Reduced fees of $283,000 each fiscal year.

2. Continuing costs or savings: Revenue will remain the same except as indicated below.

3. Additional factors increasing or decreasing costs: Increase or decrease in revenue will be in direct proportion to the increase or decrease in plumber license issued.

(b) Reporting and paperwork requirements: Licensing procedures are in place and only forms will need to be revised.

(3) Assessment of anticipated effect on state and local revenues: Approximately $283,000 reduction in revenue to the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Existing approach of charging fees to provide service is in place and only require modification as requested.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is applied in that the fee for master plumber license is higher than that of the journeyman plumber.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.030, 318.134
NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This administrative regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is proposed to reduce the inspection fees as agreed by the Plumbing Code Committee and set forth in Section 5 of this administrative regulation when operating funds were sufficient to carry out the plumbing program in the state. [~~necessary to raise the fees to cover the costs of inspections and otherwise administer the State Plumbing Code. This amendment was approved by the Plumbing Code Committee on February 24, 1992.~~]

Section 1. Issuance of Permits. (1) Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the

following requirements are met:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he shall abide by the terms of this section; and

(c) All work shall be performed in compliance with the state plumbing code; and

(d) All the work shall be personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use.

(4) A permit shall not be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes; however, a permit shall be required for the addition of a backflow prevention device to an existing potable water supply.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if a fixture, soil or waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced, or for the addition of a backflow prevention device to an existing water service.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For taking over a plumbing installation originally permitted to another master plumber or for assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be ten (10) [~~twenty three (23)~~] dollars plus:

(a) Two (2) [~~Four (4)~~] dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Two (2) [~~Four (4)~~] dollars for each domestic water heater.

(c) Two (2) [~~Four (4)~~] dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be ten (10) [~~twenty three (23)~~] dollars plus;

(a) Four (4) [~~Five (5)~~] dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Four (4) [~~Five (5)~~] dollars for each domestic water heater.

(c) Four (4) [~~Five (5)~~] dollars for each conductor opening.

(d) Four (4) [~~Five (5)~~] dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be ten (10) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this administrative regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or provide testing for an installation made by someone else, the permit fee shall be the base fee of ten (10) [~~twenty three (23)~~] dollars only.

(5) All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost. All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(6) All plumbing installation permits issued under this administrative regulation shall expire one (1) year after date of issuance. If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this administrative regulation.

Section 5. The Department of Housing, Buildings and Construction shall appear before the State Plumbing Code Committee no later than March 1, 1992, and each year thereafter for a review of the fee structure set forth in this administrative regulation, and the State Plumbing Code Committee may approve the existing fee structure or recommend increases or reductions.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 22, 1993
FILED WITH LRC: March 12, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 27, 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 April 22, 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: Approximately 40,000 combined plumbers, contractors or building owners who would purchase a plumbing permit each year for installations other than water heaters.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct reduction to those affected would be $1,010,000.

2. Continuing costs or savings: Cost will remain the same except as indicated immediately below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increase or decrease will be in direct proportion to increase or decrease in the number of plumbing permits issued. Further upswing in the economy will mean more permits.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Revenue

producing amendment to meet approximately $1,010,000 of estimated $2,600,000 plumbing program funding surplus for this biennium.

(a) Direct and indirect costs or savings:

1. First year: Reduced fees of $1,010,000 each fiscal year.

2. Continuing costs or savings: Cost will remain the same except as indicated below.

3. Additional factors increasing or decreasing costs: Increase or decrease will be in direct proportion to increase or decrease in the number of plumbing permits issued. Further upswing in the economy will mean more permits.

(b) Reporting and paperwork requirements: Procedures for issuing permits are in place and only form will need to be revised.

(3) Assessment of anticipated effect on state and local revenues: Approximately $1,010,000 reduction in revenue to the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Existing approach of charging fees to provide service is in place and only require modification as requested.

(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. This regulation is tiered to represent the appropriate charge depending on the number and complexity of the inspection.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:290. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 194.050, 341.270

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Human Resources to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31, of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1992 [~~1991~~], was $364,286,605.73 [~~357,939,766.55~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1992 [~~1991~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1 of this administrative regulation, and in accordance with KRS 341.270(3), Schedule A of Table A shall be in effect for calendar year 1993 [~~1992~~], because the "trust fund balance" equals or exceeds $350,000,000, on December 31, 1992 [~~1991~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than 8.0%	9.00%

MARGARET WHITTET, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: March 4, 1993

FILED WITH LRC: March 9, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, CHR Buildings, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 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: William K. Moore, Deputy Counsel for Administrative Law, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Whittet

(1) Type and number of entities affected: 71,632 Kentucky employers.

(a) Direct and indirect costs or savings to those affected:

1. First year: No change - rate schedule remains the same.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Possible increase in UI Trust Fund receipts due only to natural wage increases and increased number of employers.

(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: 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: Was tiering applied? No. All taxpaying employers treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1993, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:016. Psychiatric hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subparts C, D, 456 Subparts G, H, I, 42 USC 1396 a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the 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 services in psychiatric hospitals for which payment shall be made by the Medicaid [~~Medical Assistance~~] program in behalf of both the categorically needy and the medically needy.

Section 1. Provision of Service. Inpatient services provided in an [~~institution accredited by the~~] appropriately licensed [~~state agency as~~ a] psychiatric hospital participating in the Medicaid program [~~which meets the requirements specified in Section 1861(f) of the Social Security Act~~] shall be limited [~~made available~~] to recipients of medical assistance age sixty-five (65) or over or under age twenty-one (21) [~~as limited by Section 1905(a)(14) and 1905(a)(16) of the Social Security Act who~~] meeting [~~appropriate~~] patient status criteria. Services shall be provided in accordance with the federal Medicaid requirements [~~shown in federal regulations at 42 CFR 441, Subparts C and D, and 42 CFR 456 Subparts G, H, and I,~~] and with Medicaid policies shown in the Psychiatric Inpatient Facility [~~Hospital~~] Utilization and Placement Review Manual, revised March 1, 1993 [~~dated July 1, 1990~~] which is hereby incorporated by reference and referred to hereafter as "the manual". The 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.

Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) is subject to the utilization review mechanism established by the cabinet and shown in the manual. Notwithstanding a continuing need for psychiatric care, payment for services cannot be continued past the 22nd birthday for patients admitted prior to the 21st birthday.

Section 3. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital desiring to participate in the Medicaid program shall be required as a condition of eligibility to participate in the Medicare program when the [~~such~~] hospital serves patients eligible for payments under the Medicare program.

Section 4. Determining Patient Status. Professional staff of the cabinet or an agency operating under its lawful authority pursuant to the terms of its agreement with the cabinet shall review and evaluate the health status and care needs of the recipient in need of psychiatric hospital care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs, and ambulatory care services available in the community to meet those needs. The patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, when their needs mandate psychiatric hospital care on a daily basis and when, as a practical matter, the necessary care can only be provided on an inpatient basis. The placement and continued stay criteria shown in Parts II, III and IV [~~Section 15 and 16~~] of the manual [~~(placement guidelines for individuals under age twenty-one (21) and placement guidelines for individuals age sixty-five (65) or over)~~] shall be used to determine patient status and ensure that proper treatment of the individual's psychiatric conditions requires services on an inpatient basis under the direction of a physician, that psychiatric hospital services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, and that ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.

Section 5. Reevaluation of Need for Services. All mental hospital stays shall be certified for a specific length of time, as deemed medically appropriate by the utilization review organization considering the health status and care needs of the applicant or recipient. [~~Mental hospital services shall be provided for so long as the health status and care needs are within the scope of program benefits as described in Sections 1, 2, and 4 of this regulation.~~] Patient status shall be reevaluated at least once every thirty (30) days. Upon the expiration of the certified length of stay, the Medicaid Program shall not be responsible for the cost of care unless the recipient or his authorized representative requests and the utilization review organization certifies additional days. [~~If a reevaluation of care reveals that the patient no longer requires psychiatric hospital care (i.e., does not meet patient status criteria), payment shall continue only through the last day for which the stay is certified, unless an appeal is made in a timely manner as shown in the manual.~~]

Section 6. Reconsideration and Appeals. When an adverse determination is appealed by the applicant or recipient, the decision shall be reviewed by the cabinet (or its representative) using time

frames specified in the manual to determine whether the decision should be reversed. [~~If the adverse determination is appealed within ten (10) days of the date of the decision, payments may continue as provided for in 904 KAR 2:055, Hearings and appeals.~~]

Section 7. The amendments to this regulation shall be effective with regard to services provided on or after March 1, 1993 [~~July 1, 1990~~].

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 15, 1993
FILED WITH LRC: February 24, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 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 April 16, 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: William K. Moore, Deputy Counsel for Administrative Law, 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: Janie A. Miller
(1) Type and number of entities affected: 16 psychiatric facilities (approximately 2,000 unduplicated patients per year).
(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: $10 million (savings) to the Medicaid Program (see item 6 below).
2. Continuing costs or savings: $10 million (savings)*.
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: *The Department for Social Services has indicated it may incur an additional cost of about $1.2 million annually for expenditures on behalf of children in its custody as a result of this change.
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 1:428. Incorporation by reference of the Adult Day Health Care Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]
STATUTORY AUTHORITY: KRS 194.050, 32 CFR 440.180, 42 USC 1396a, b, d, n
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 adult day health care services component of the Medicaid [~~Medical Assistance~~] program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Adult Day Health Care Services Manual, revised March 1, 1993 [~~April 1, 1990~~], 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.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 22, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 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 April 16, 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: William K. Moore, Deputy Counsel for

Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Janie A. Miller

(1) Type and number of entities affected: All participating providers of adult day health care services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any 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 1:505. Psychiatric residential treatment facility services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 447.325, 42 CFR 440.160, 42 USC 1396a-d

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 provisions relating to coverage of psychiatric residential treatment facility services. Additional requirements relating to this program are shown in 907 KAR 1:512, incorporation by reference of the psychiatric residential treatment facility services manual.

Section 1. Definition. "Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Covered Admissions. Covered admissions shall [~~must~~] be preauthorized and shall be limited to those for children age six (6) through twenty (20) years of age meeting patient status criteria. Coverage may continue, based on medical necessity, for an individual in a PRTF on his 21st birthday so long as he has not reached his 22nd birthday. Services shall not be covered if appropriate alternative services are available in the community.

Section 3. Durational Limitations. Patient stays are subject to utilization review by the cabinet.

Section 4. Determining Patient Status. The cabinet or its designated agent shall review and evaluate the health status and care needs of the recipient in need of inpatient psychiatric care using the same standards as set forth for inpatient psychiatric hospital care in 907 KAR 1:016. The care needs of the patient shall meet PRTF patient status criteria only when the individual meeting the patient status criteria in 907 KAR 1:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in the PRTF rather than a psychiatric hospital; the individual shall [~~must~~] require PRTF services on a continuous basis as a result of a severe mental or psychiatric illness (including severe emotional disturbances).

Section 5. Reevaluation of Need for Services. Patient status shall be reevaluated for PRTF patients at thirty (30) day intervals. If a reevaluation reveals the patient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified [~~unless an appeal is made in a timely manner~~].

Section 6. Reconsideration and Appeals. Reconsiderations and appeals shall be handled in the same manner as specified in 907 KAR 1:016, Section 6.

Section 7. Exclusions from Coverage. Chemical dependency treatment services shall be excluded from coverage when the need for the services is the primary diagnosis of the patient. Chemical dependency treatment services shall be covered as incidental treatment related to the primary diagnosis if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis.

Section 8. Reserved Bed Days. The cabinet shall [~~will~~] cover reserved bed days in accordance with the following specified upper limits and criteria:

(1) The following upper limits (applied per provider) shall be applicable for reserved bed days:

(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;

(b) A maximum of fourteen (14) days per calendar year for admissions to a mental hospital or a psychiatric bed of an acute care hospital;

(c) A maximum of twenty-one (21) days per six (6) months during a calendar year for other leaves of absence; and

(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.

(2) The following criteria shall [~~must~~] be met for reserved bed days to be covered:

(a) The person is in Medicaid payment status in the PRTF and has been a resident of the facility at least overnight;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient were it

not reserved;

(d) Hospitalization shall [~~must~~] be in Medicaid participating hospitals with the admission appropriately approved by the cabinet or its designated agency; and

(e) For leaves of absence other than for hospitalization, the patient's physician orders and plan of care shall provide for such leaves; leaves of absence include visits with relatives and friends.

[~~Section 9. Implementation Date. The provisions shown in this regulation shall be applicable with regard to services provided on or after July 1, 1991.~~]

FONTAINE BANKS, JR., Secretary
JANIE A. MILLER, Acting Commissioner
APPROVED BY AGENCY: February 22, 1993
FILED WITH LRC: February 24, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 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 April 16, 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: William K. Moore, Deputy Counsel for Administrative Law, 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: Janie A. Miller

(1) Type and number of entities affected: Two PRTF's participating in Medicaid.

(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: *Any savings was reflected in 907 KAR 1:016, which reflected $10 million in annual Medicaid savings as a result of a clarification to the appeals process. The Department for Social Services (DSS) has determined that DSS costs relating to uncovered days could increase by about $1.2 million per year.

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 Retardation Services
(Proposed Amendment)

908 KAR 1:310. Administrative procedures for DUI facilities and programs.

RELATES TO: KRS Chapter 189A
STATUTORY AUTHORITY: KRS 189A.040(6), 194.030(9)
NECESSITY AND FUNCTION: KRS Chapter 189A requires the Cabinet for Human Resources to promulgate administrative regulations to prescribe standards for the licensing and operation of education and treatment facilities and programs, for offenders receiving assessment, education, or treatment under the driving while impaired law.

Section 1. Definitions. As pertaining to the cabinet's regulations regarding DUI programs unless the content otherwise requires:

(1) "Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~].

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) [~~"Licensee" means the individual or entity approved and licensed by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation.~~

~~(8)~~] "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(8) [~~(9)~~] "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(9) [~~(10)~~] "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

[~~(11) "Program survey form" means a form issued by the division to the program to collect all necessary program information.~~

~~(12) "Program code" means a three (3) digit number issued to a program by the division when certification is granted.~~

~~(13) "Survey report of change form" means a form used by a program when submitting any new or revised information to the division.~~]

(10) [~~(14)~~] "Program administrator" means the person responsible

for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

[~~(15) "Memorandum of understanding (MOU)" means a written communication between programs outlining the duties and responsibilities of each program.~~]

(11) [~~(16)~~] "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(12) [~~(17)~~] "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(13) [~~(18)~~] "Approved curriculum" means "talking about alcohol driving unimpaired nine (9) hour," "talking about alcohol driving unimpaired twenty (20) hour," "Kentucky alcohol and other drug education program nine (9) hour," and "Kentucky alcohol and other drug education program twenty (20) hour."

[~~(19) "Individual" means a person certified by the division to conduct assessment and education services.~~

~~(20) "Uniform citation" means the citation given to the defendant when the defendant is arrested for driving under the influence.~~

~~(21) "Administrative Office of the Courts (AOC) Form 494" means the form completed by the circuit clerk on the day of the defendant's conviction and which is sent to the program where the defendant is referred for assessment.~~

~~(22) "Cabinet for Human Resources (CHR) Form PAM-MHMR 052" means the form completed by the program which conducts the client's assessment, and which is then used to notify the court, the client, Department of Transportation (DOT), and the division when a client has satisfactorily completed any required services.~~]

(14) [~~(23)~~] "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

[~~(24) "Completion notice" means the client's copy (pink) of CHR Form PAM-MHMR-052.~~]

(15) [~~(25)~~] "Case management" means an administrative function to insure coordination of client services and continuity of care.

(16) [~~(26)~~] "Court" means the court where a client is convicted of DUI.

[~~(27) "Department of Transportation (DOT)" means the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.~~

~~(28) "Nine (9) hour basic education course" means an education service for low risk first time offenders consisting of a minimum of nine (9) hours of instruction and group interaction.~~

~~(29) "Twenty (20) hour early intervention education course" means an education service for first or multiple offenders consisting of a minimum of twenty (20) hours of instruction and group interaction.~~]

(17) [~~(30)~~] "Client" means any individual receiving services in a DUI program.

(18) [~~(31)~~] "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(19) [~~(32)~~] "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

[~~(33) "Low risk" means a client who has been assessed as not having an alcohol or substance abuse problem requiring treatment.~~

~~(34) "Medium risk" means a client who has been assessed as having an alcohol or substance abuse problem but is not chemically dependent.~~]

(20) [~~(35)~~] "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

[~~(36) "Negative certification action" means an action by the division to revoke, modify, suspend, or deny certification or recertification of a DUI program, assessor or instructor.~~

~~(37) "Hearing officer" means the person designated by the division to conduct a hearing and make a recommendation to the division on any appeal of negative certification action.~~]

(21) [~~(38)~~] "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

[~~(39) "Applicant" means any individual or entity who has been licensed by the cabinet, and is making application for certification to the division.~~]

(22) [~~(40)~~] "Facility" means the physical area, including the grounds and buildings where program functions take place.

[~~(41) "Release of information" means a client's written authorization for a program to release information from that client's case file.~~

~~(42) "Clinical services supervisor" means a person who meets the qualifications pursuant to the definition in 908 KAR 1:190.~~]

Section 2. Licensing Requirements. (1) An individual or entity desiring to provide DUI services as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from the cabinet in accordance with the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the nonmedical alcohol treatment and education center (NATE center) administrative regulations, 908 KAR 1:010 through 908 KAR 1:140.

(2) Programs conducted in a facility established and maintained by a licensed federal hospital shall be exempt from state licensing requirements, as such facilities are created subject to federal licensure and regulatory requirements, in accordance with 38 USC 301 [~~201~~], 38 USC 1720A [~~620A~~], 38 USC 7333 [~~4133~~], and 38 USC 7334 [~~4134~~].

(3) Programs conducted in a facility established and maintained by a hospital licensed by the cabinet shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160, Section 1(1)(c).

(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.

Section 3. Certification Requirements. (1) An individual or entity, properly licensed, and desiring to provide DUI assessment or education services, shall obtain program certification from the division. A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division. A certified program may operate statewide if it is properly licensed and certified in all service locations. All service locations shall be subject to the same qualifications as the central office location. A program may be certified to provide assessment, or education services or assessment and education services. A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program. The program administrator shall be knowledgeable of the requirements for operating a DUI program and is responsible for the services delivered by the program. The program administrator shall be responsible for insuring that all staff having primary responsibility for the delivery of DUI services, are knowledgeable of the DUI law and administrative regulation.

(2) Any individual or entity eligible to be certified as a program shall make application in writing to the division, sign a statement of ethical practice contained on the application for DUI program certification, and agree to abide by the standards stated in this administrative regulation. The division shall provide an application for program certification along with a program survey form to be completed by the applicant and returned to the division. The applicant shall be required to submit to the division a separate program survey form for each location where the applicant is licensed, and where the applicant desires to provide DUI assessment or education services. The applicant shall designate on the program survey form the types of services that will be provided, the fees charged for such services.

[and] the names and titles of all certified staff providing assessment or education services at that location, and the name of the clinical services supervisor for that location. The clinical services supervisor shall be an individual with a masters degree or greater in psychiatry, psychology, social work, or nursing with a specialty in psychiatric or mental health nursing or other mental health program; or a certified chemical dependency counselor (CCDC). The individual shall also have eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to employment with the program. The individual shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment. The division shall issue a three (3) digit program code to the program when certification is granted and include the name and location of the program on any published list of certified programs. A program shall complete a program survey form at the time of application for initial program certification and whenever a program opens a new clinic location.

(a) The division shall publish, on an annual basis, on July 1, a directory listing all programs certified to provide assessment services, the fees charged for such services, and the program service location addresses. The division shall issue the directory to all district court judges, district court clerks, and certified programs, and shall make it available to the public upon request.

(b) The division may [shall] issue directory additions, revisions and corrections on October 1, January 1, and April 1 each year. A program shall submit all additions, revisions and corrections, in writing, on a [program survey] report of change form obtained from the division, at least thirty (30) days prior to the publication dates.

(3) The application for DUI program certification, the program survey form, and the report of change form are hereby incorporated by reference. Copies of the application for DUI program certification, the program survey form, and the report of change form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(4) The program certification shall remain in effect for a [the] period of two (2) years and [licensure not to exceed one (1) year,] is renewable for a like period, [and shall expire simultaneously with the expiration of the program's license,] unless earlier suspended or revoked. The program shall request recertification, in writing, thirty (30) [forty five (45)] days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and shall [will] be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(5) [(4)] The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. If there is a change [In the event of a change] of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(6) [(5)] A program shall accept referrals from other programs or from the courts. A program may refuse a client referral because of inadequate staff, lack of an appropriate service, or because of a client waiting list. With a client's written authorization for [proper] release of information [forms signed by the client], copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency. The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(7) [(6)] A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals. The MOU shall fully outline the duties and responsibilities of the programs to each other and the terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(8) [(7)] The division shall conduct at least one (1) [unannounced] inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards. In their discretion, the division may conduct more than one (1) inspection annually. The inspection may be at any of the program's locations. Any inspection conducted by the division may be unannounced. The division shall notify the program, in writing, within sixty (60) [thirty (30)] days of the results of the inspection.

(9) [(8)] The division shall have the right to inspect any office, files, client records or other materials of any certified program to insure compliance. The division shall have the right to attend and observe any assessment or education session conducted by the program. During these inspections a program shall cooperate with the division's representatives and shall provide such records or materials requested. The client record shall contain all information pertinent to the provision of services. Program records shall be confidential and shall not be released without written consent of the client, unless court ordered or requested by the division, as part of a compliance review. A program shall maintain client records for a minimum of five (5) years. When records are discarded they shall be burned or shredded.

(10) [(9)] The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program shall [must] submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days from the date the program receives the inspection report. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(11) [(10)] All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division. A program shall employ individuals who hold valid certification from the division to provide DUI assessment and DUI education services. It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training. The application shall be accompanied by a copy of any required transcript, diploma, certificate, certification, or proof of work experience. An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division.

(a) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment.

(b) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing.

(12) [(11)] The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified. The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days

after completion of a training session. The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action.

(13) [~~(12)~~] An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification.

(a) An individual desiring [~~DUI~~] certification as a[~~n~~] DUI assessor shall have the following education or work experience [~~training~~]:

1. Bachelor level degree in Human Services with certified chemical dependency counselor (CCDC) trainee status; working under weekly clinical supervision where DUI assessments, treatment plans and staff notes are reviewed and cosigned in a personal contact meeting, with a clinical services supervisor, as defined in Section 3(2) of this administrative regulation. An individual holding CCDC trainee status has until the date of application for their DUI assessor recertification to become a CCDC; or

2. Qualified mental health professional defined as:

a. Psychiatrist - board certified or board eligible;

b. Psychologist - licensed clinical psychologist, certified psychologist, or a psychological associate;

c. Psychiatric nurse - or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker - MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

[~~f. Mental health associate - an individual with a bachelor's degree in a mental health related field, working under the supervision of a clinical services supervisor; or~~]

3. Certified chemical dependency counselor (CCDC). [~~; or~~

~~4. Certified chemical dependency counselor (CCDC) trainee, with two (2) years clinical work experience in the substance abuse treatment field, working under weekly clinical supervision of a CCDC, an individual with a bachelor's degree in the human services field, or a qualified mental health professional as defined in this regulation. An individual holding CCDC trainee status who was certified by the division prior to January 1, 1992 has until January 1, 1995 to become a CCDC.~~]

(b) An individual desiring certification as a DUI assessor shall successfully complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study.

3. Receive the recommendation of the trainer(s) and the division's representative.

4. Sign a statement [~~agreeing to abide by a code~~] of ethical practice contained in [~~on~~] the DUI assessor certification application packet and agree to abide by the standards stated in this administrative regulation [~~these regulations~~].

(14) [~~(13)~~] An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for DUI instructor certification.

(a) An individual desiring certification as a DUI instructor shall have the following education or work experience [~~training~~]:

1. Bachelors degree in a related field - social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field; or

4. Professional equivalent as defined by the Division of Substance Abuse.

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; receive the recommendation of the trainer(s) and the division's representative; and sign a statement [~~agreeing to abide by a code~~] of ethical practice contained in [~~on~~] the DUI instructor certification application packet and agree to abide by the standards stated in this administrative regulation [~~these regulations~~].

(15) The application packet for DUI assessor and DUI instructor certification is hereby incorporated by reference. Copies of the application packet may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(16) [~~(14)~~] Certification for DUI assessors and DUI instructors shall be for a period of five (5) years from the effective date of this administrative regulation or from the date of the individual's initial certification as a DUI assessor or DUI instructor, whichever is longer, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked. It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification. An individual shall have achieved the standards for clinical services supervisor as defined in Section 3(2) of this administrative regulation at the time of application for recertification as a DUI assessor. If an individual has not achieved such standards the individual's application for DUI assessor recertification shall be denied and any previous DUI assessor certification shall expire. An individual desiring recertification as a DUI instructor shall attend, participate and demonstrate competency at a training seminar authorized by the division prior to application for DUI instructor recertification. [~~An individual shall attend any recertification training required by the division, during the previous sixty (60) month period.~~] If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division. An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

(17) [~~(15)~~] All complaints relating to a certified program, a certified DUI assessor, or a certified DUI instructor, that are not resolved by the program through their agency grievance procedures, shall be sent to the division, in writing, and signed by the complainant. The division shall investigate the complaint and take any necessary action [~~notify the complainant, in writing, within thirty (30) days, of the action taken~~].

Section 4. Assessment Requirements. (1) The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the

division. The court clerk, shall on the day of conviction, send a copy of the [~~client's~~] uniform citation issued to the client at the time of arrest for DUI, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(2) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division. The computerized screening instrument portion of the assessment may be administered individually or in groups. A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions. The long form of the computerized screening instrument shall be administered in all cases except when administered to a group of more than ten (10), when administered to a reading disabled individual, or when administered to an individual being reassessed within thirty (30) days of their initial assessment. In such cases a program may administer the short form of the computerized screening instrument. A program shall maintain a roster of all clients assessed, in a format approved by the division; [~~, and~~] a copy of such roster shall be maintained in the program's central administrative files and made available to the division upon request.

(4) An assessment shall include the administration of the approved computerized screening instrument; a [~~structured~~] private clinical interview between the certified DUI assessor and the client; a discussion of referral options and client resources; a determination of the severity of a client's problem; and referral to a program of the client's choice offering services at the level of care needed by the client. A program shall not conduct an assessment for a client, if the client has received an assessment for that conviction at another DUI program. A program shall refer a client back to the court, if a client previously received an assessment for that conviction, at another DUI program. A client shall pay all required fees for the assessment to the program.

(5) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services. The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program of the client's choice. The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(6) A program shall identify any client with special needs at the time of assessment in order to make an appropriate referral. Specifically, the computerized screening instrument shall contain a set of questions designed to identify whether or not a client is pregnant, and if so, the stage of pregnancy, at the time of assessment. This information shall be used to determine the type and level of treatment or education services needed by the client. The assessor shall consider the special needs of the client when making the referral.

(7) A program shall maintain a case file on each client assessed. The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file. There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services. Each client file shall contain the Cabinet for Human Resources (CHR) Pamphlet Mental Health Mental Retardation 052 form (PAM MHMR 052). [~~and~~] This form shall be used as a referral notice to transfer a client's records to another program, [~~and~~] as a completion notice to notify the court, the client, the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, and the division when a client has satisfactorily completed any required services and as a notice of noncompliance to notify the court, the client, and the division when a client fails to satisfactorily complete any required services.

(8) CHR Form PAM MHMR 052 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 [~~40621~~] between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(9) A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program. The case management process shall include the coordination of services provided to each client; the responsibility of communicating with the court such information as the court requests on each client; the responsibility of notifying the court, the client and the division when a client is noncompliant; and the responsibility of notifying the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing [~~Department of Transportation (DOT)~~], the court[~~s~~], the client and the division when a client has satisfactorily completed the required services. The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in Section 3(7) of this administrative regulation [~~subsection (6) of this section~~].

(10) A Program discontinuing operations while still maintaining case management responsibility for a client, shall notify the client in writing, and shall refer the client and transfer case management responsibility of the client's case to the program of the client's choice. The program discontinuing operations, shall submit to the division in writing, a list of all clients for whom the program maintains case management responsibility, and a copy of each client's CHR PAM MHMR 052 referral form, as defined in Section 3(7) of this administrative regulation, with the name of the program receiving the client referral listed on the form. [~~transfer the client's case file to the division. The division shall then maintain case management responsibility for the client until the client satisfactorily completes any required services.~~]

Section 5. Education Requirements. (1) A program desiring to provide DUI education services, shall use a curriculum approved by the division, and instruction shall be provided by an instructor holding valid certification from the division. Two (2) levels of DUI education services; a nine (9) hour basic education course, and a twenty (20) hour early intervention education course shall be provided. Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division. A program may provide any or all levels of DUI education courses, and may use any or all of the approved curricula. The maximum number of clients in a class shall be no more than twenty-five (25). An instruction session shall not exceed three (3) hours per day.

(a) The nine (9) hour DUI basic education course shall be for first offenders only and shall consist of a minimum of nine (9) hours of instruction and group interaction. Those first offenders assessed as low risk, not having an alcohol or substance abuse problem requiring treatment, shall be enrolled in a nine (9) hour education course.

(b) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders and shall consist of a minimum of twenty (20) hours of instruction and group interaction. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of

Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 [~~40621~~] between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) A client shall attend and complete all sessions of class instruction, in the required sequence, and shall comply with all standards of behavior required by the program to satisfactorily complete a DUI education service. If a client cannot attend a session of class instruction, due to an emergency, the client may be permitted to attend that session of class instruction when the missed class session is repeated. If a client demonstrates a need for services at a different level of care, the program administrator shall refer the client to any eligible program for the required services, and notify the program, which conducted the assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the DUI education service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.

(4) All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials.

(5) A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 6. Treatment Requirements. (1) A program desiring to provide treatment services shall be licensed by the cabinet to provide the services offered, shall conform to the state licensure standards for treatment facilities, and shall employ qualified staff members, who have training and experience in dealing with the physical and psychological complications of alcohol and drug dependence. A program may provide outpatient, intensive outpatient, inpatient, residential or detoxification chemical dependency or substance abuse treatment services.

(a) The service a DUI client is assigned depends on the severity of symptoms, available support resources, and individual dynamics to be determined by the assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, or detoxification services.

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15).

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of one and one-half (1 1/2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(b) A client needing more restrictive services than paragraph (a)1a or b of this subsection shall be referred to detoxification, inpatient, residential or transitional living services.

(2) A program providing DUI treatment services shall be responsible for developing a treatment plan for each client accepted for treatment services. The treatment plan shall be individualized for the needs of each client and shall include a written statement of treatment goals and measurable objectives together with a realistic time schedule for achieving them. The treatment plan shall be signed by the client and the clinician. A client's treatment plan shall be reviewed at least once every 180 days and all changes shall be recorded in the client's case file.

(3) A client shall comply with all attendance requirements of the treatment plan to satisfactorily complete a required treatment service. If a client demonstrates a need for service at a different level of care the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action. The program administrator shall make the determination as to whether a client has satisfactorily completed the treatment service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.

(4) All required fees for treatment services shall be paid to the program by the client.

(5) Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 7. Hearing Requirements. (1) Any program or individual may appeal negative certification action taken by the division by notifying the division to revoke, modify, suspend or deny certification or recertification of a DUI program, assessor, or instructor, in writing within twenty (20) days of the issuance of notice of negative certification action. Upon receipt of notice of appeal, the director of the division shall designate a hearing officer to conduct a hearing and make a recommendation to the division.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.

(3) The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The division shall retain all records related to a hearing for a period of five (5) years.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 10, 1993
FILED WITH LRC: March 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for Wednesday, April 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by Friday, April 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: Currently there are 14 Community Mental Health Centers and 46 private programs providing services in 200 different locations, which are affected.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings because the amendment only corrects language and punctuation; changes the administrative body's address; clarifies recertification requirements for assessors and instructors; changes eligibility requirements for assessors; and incorporates by reference the application for DUI program certification, the program survey form, the report of change form, and the DUI assessor and instructor certification application packet.

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: There will be no effect because the amendment only corrects language and punctuation; changes the administrative body's address; clarifies recertification requirements for assessors and instructors; changes eligibility requirements for assessors; and incorporates by reference the application for DUI program certification, the program survey form, the report of change form, and the DUI assessor and instructor certification application packet.

(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 because the amendment only corrects language and punctuation; changes the administrative body's address; clarifies recertification requirements for assessors and instructors; changes eligibility requirements for assessors; and incorporates by reference the application for DUI program certification, the program survey form, the report of change form, and the DUI assessor and instructor certification application packet.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the amendment only corrects language and punctuation; changes the administrative body's address; clarifies recertification requirements for assessors and instructors; changes eligibility requirements for assessors; and incorporates by reference the application for DUI program certification, the program survey form, the report of change form, and the DUI assessor and instructor certification application packet.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or governmental policy in conflict.

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? No. The requirements apply equally to all programs.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 1993

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.050
STATUTORY AUTHORITY: KRS 11A.010(7), (9)(a)-(i), 11A.050
NECESSITY AND FUNCTION: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7) and public servant as listed in KRS 11A.010(9)(a)-(i) file a statement of financial disclosure with the commission.

Section 1. The "Statement of Financial Disclosure" form is incorporated by reference.

Section 2. Those required to file are officers as defined in KRS 11A.010(7) including major management personnel with procurement authority over $1,000 and public servants as listed in KRS 11A.010(9)(a)-(i).

Section 3. The "Statement of Financial Disclosure (011493)" may be inspected; copied, or obtained from the Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: March 5, 1993
FILED WITH LRC: March 9, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing of this administrative regulation shall be held on Monday, April 26, 1993, at 10 a.m., Eastern Time, at The Capitol Building, Room 110, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, April 21, 1993, five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark D. Guilfoyle, Acting Executive Director, Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601, (502) 564-2611.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mark D. Guilfoyle
(1) Type and number of entities affected: Approximately 700 management level employees of the Executive Branch.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings to the affected employees.
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 additional; annual filing of Statement of Financial Disclosure is already required.
(2) Effects on the promulgating administrative body: No additional; annual filing of Statement of Financial Disclosure is already required.
(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: Staff of Executive Branch Ethics Commission to prepare Statement of Financial Disclosure and distribute annually to employees who must file.
(3) Additional factors increasing or decreasing costs:
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 11A does not permit alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. All affected executive branch employees named in the KRS 11A.010(7) and (9)(a)-(i) are required to file the same document annually.

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:020. Complaints.

RELATES TO: KRS 11A.080
STATUTORY AUTHORITY: KRS 11A.080
NECESSITY AND FUNCTION: KRS 11A.080 establishes procedures relating to review and resolution of complaints. This administrative regulation implements KRS 11A.080 by establishing requirements and methods which are not set forth in KRS Chapter 11A.

Section 1. (1) A complaint shall state:
(a) The full name and address of:
1. The complainant;
2. Complainant's attorney, if an attorney has been retained; and
3. If known, the person against whom the complaint is made.
(b) In sufficient detail, the action that is the basis of the complaint; and
(c) If known, the statute alleged to have been violated.
(2) A complaint shall be signed by the complainant or complainant's attorney under penalty of perjury.
(3) A complaint shall contain sufficient information to inform the commission of the details of the alleged violation.

Section 2. Within sixty (60) days of initiating a preliminary inquiry into the complaint, the commission shall forward a copy of the complaint to any person alleged to have committed a violation, and no later than twenty (20) days after being notified of a complaint, a person against whom a complaint is filed shall:
(1) File with the commission a written response to the complaint; and
(2) Serve a copy of the response on the complainant.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: March 5, 1993
FILED WITH LRC: March 9, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing of this administrative regulation shall be held on Monday, April 26, 1993, at 10 a.m., Eastern Time, at The Capitol Building, Room 110, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, April 21, 1993, five business days prior to the hearing, of their intent to attend If no notification of intent

to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark D. Guilfoyle, Acting Executive Director, Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601, (502) 564-2611.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mark D. Guilfoyle

(1) Type and number of entities affected: Unknown; depends upon the number of complaints received.

(a) Direct and indirect costs or savings to those affected: Unknown; depends upon the number of complaints received.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition: There is actually no increase in cost because the funds appropriated to the predecessor agency - Financial Disclosure Commission - were transferred to the Executive Branch Ethics Commission. The commission is not spending anything in addition to the amounts contemplated in the appropriations.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings. There is actually no increase in cost because the funds appropriated to the predecessor agency - Financial Disclosure Commission - were transferred to the Executive Branch Ethics Commission. The commission is not spending anything in addition to the amounts contemplated in the appropriations.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Additional factors increasing or decreasing costs:

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 11A does not provide for alternative methods. The law requires all members of the class affected by this statute to be treated equally.

(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. The law requires all members of the class affected by this statute to be treated equally.

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:030. Hearings.

RELATES TO: KRS 11A.100

STATUTORY AUTHORITY: KRS 11A.080, 11A.100

NECESSITY AND FUNCTION: KRS 11A.080(4)(b) gives the commission the authority to initiate an adjudicatory hearing to determine whether there has been a violation.

Section 1. Pleadings and Other Documents. (1) Material submitted to the commission shall be addressed to the Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601.

(2) A document that does not on its face comply with the provisions of this administrative regulation may be rejected for filing.

(3) Pleadings and other documents related to an adjudicatory hearing shall be printed or typewritten:

(a) On one (1) side of a page; and

(b) Double spaced.

(4) If a party is represented by an attorney:

(a) Party's attorney shall:

1. File a notice of appearance with the commission; and

2. Sign pleadings and other documents filed by that party;

(b) Service of pleadings and other documents upon party's attorney shall be deemed proper service upon the party.

(5) Unless a statute specifically provides otherwise, a pleading or other document shall not be required to be verified or accompanied by affidavit.

(6)(a) In order to be considered, a brief shall be filed within the time specified by the person conducting a hearing.

(b) A party may submit a written request for an extension of time in which to file a brief.

(7)(a) Briefs, motions and other pleadings, and petitions for rehearing shall be served upon all parties or their attorneys.

(b) Six (6) copies of a brief, motion, other pleading, or petition for rehearing shall be filed with the commission.

(8) For good cause shown, the commission may permit a party to amend a pleading or other document.

Section 2. Prehearing Conference. (1) Prior to a hearing, a party may request a prehearing conference.

(2) The chairman shall designate the person who will conduct the prehearing conference.

(3)(a) At the prehearing conference, parties may stipulate facts, issues, or other matters.

(b) The designated commission staff member shall prepare a prehearing order that incorporates matters stipulated at the prehearing conference.

(c) The prehearing order shall be submitted to the commission for consideration.

(d) If approved by the commission:

1.The parties shall be bound by the prehearing order; and

2. A copy of the prehearing order shall be mailed to the parties.

Section 3. Conduct of Hearing. (1) A hearing shall be conducted by:

(a) One (1) or more members of the commission; or

(b) A person designated by the commission.

(2) The person or persons conducting the hearing shall prepare and submit to the commission:

(a) Findings of fact and conclusions of law; and

(b) A recommended order.

(3) The commission may:

(a) Adopt the findings of fact, conclusions of law, and recommended order in whole or in part;

(b) Issue its own findings of fact, conclusions of law, and order;

(c) Remand the matter for additional hearings; or

(d) Take other action it deems necessary in order to reach a decision.

(4) A decision by the commission shall:

(a) Be in writing; and

(b) Contain a statement of its:

1. Findings of fact;

2. Conclusions of law; and

3. Order; and

4. Be mailed to all parties.

Section 4. Transcript of Hearing. A party may obtain a copy of the

record of a hearing upon payment of the appropriate fees.

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: March 5, 1993

FILED WITH LRC: March 9, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing of this administrative regulation shall be held on Monday, April 26, 1993, at 10 a.m., Eastern Time, at The Capitol Building, Room 110, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, April 21, 1993, five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark D. Guilfoyle, Acting Executive Director, Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601, (502) 564-2611.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mark D. Guilfoyle

(1) Type and number of entities affected: Unknown; depends on the complaints which proceed to hearing.

(a) Direct and indirect costs or savings to those affected: Unknown; depends on the complaints which proceed to hearing.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition: There is actually no increase in cost because the funds appropriated to the predecessor agency - Financial Disclosure Commission - were transferred to the Executive Branch Ethics Commission.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings. There is actually no increase in cost because the funds appropriated to the predecessor agency - Financial Disclosure Commission - were transferred to the Executive Branch Ethics Commission.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Additional factors increasing or decreasing costs:

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 11A does not provide for alternative methods. The law requires all members of the class affected by this statute to be treated equally.

(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. KRS Chapter 11A does not provide for alternative methods. The law requires all members of the class affected by this statute to be treated equally.

REVENUE CABINET
Department of Administrative Services

103 KAR 5:150. Procedures for the removal of a property valuation administrator from office.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 13A.100, 132.370

NECESSITY AND FUNCTION: KRS 132.370 provides that a property valuation administrator ("PVA") may be removed from office by final order of the Secretary of Revenue for willful disobedience of any just or legal order of the cabinet, or for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties. This administrative regulation implements KRS 132.370 and establishes the time limits and procedures to be followed by all parties in preremoval conferences and postremoval hearings.

Section 1. Notice of Intent to Remove. When the Revenue Cabinet believes a PVA should be removed from office pursuant to KRS 132.370, the PVA shall be notified in writing of the Revenue Cabinet's intent to remove him. The notice shall state the specific reasons for removal including the specific activity, act or omission on which the intent to remove is based. The notice shall advise the PVA of the PVA's right to a preremoval conference and a postremoval hearing and shall explain the time limits and procedures to be followed in that conference and hearing.

Section 2. Preremoval Conference. (1) No later than five (5) working days after receipt of the notice of intent to remove, excluding the day he or she receives such notice, the PVA may request a conference with the Secretary of the Revenue Cabinet or his or her designee to answer the charges. The conference shall be scheduled within six (6) working days after receipt of the PVA's request for a preremoval conference, excluding the day the PVA's request is received. Any failure of a PVA to request a preremoval conference shall not be deemed a waiver of the PVA's right to contest final removal from office in the postremoval hearing. In the event a preremoval conference is not timely requested, the Revenue Cabinet shall notify the PVA in writing of the effective date of removal, the specific reason for removal, and advise the PVA of the opportunity for a postremoval evidentiary hearing in accordance with subsection (3) of this section.

(2) The preremoval conference shall be held for the purpose of allowing the accused PVA to appear, with or without counsel, and to reply to the charges.

(3) No later than five (5) working days after the PVA appears before the secretary or his or her designee, excluding the day of the appearance, the secretary or his or her designee shall decide whether there are reasonable grounds to believe the charges against the PVA are true and that removal is appropriate. If the secretary or his or her designee determines the PVA shall be removed, the PVA shall be notified in writing of the effective date of removal and the specific reason for the removal, including the specific activity, act or omission upon which the removal is based. This notification shall also advise the PVA that no later than ten (10) days after receipt of the notice of removal, excluding the day he or she receives such notice, the PVA may request a postremoval evidentiary hearing before the Revenue Cabinet.

(4) The secretary or his or her designee shall schedule a postremoval hearing to be held within thirty (30) working days after receipt of the PVA's request for a postremoval hearing. A hearing may be continued or rescheduled by agreement of the parties or upon motion of a party supported by a showing of good cause.

(5) If the PVA fails to timely notify the cabinet in writing of his or her intention to appear and answer the charges at the postremoval

evidentiary hearing, he or she shall be deemed to have no objection to his or her removal or the charges underlying this removal. The secretary may, without conducting further proceedings or making findings of fact or conclusions of law, issue a decision making the removal final.

Section 3. Postremoval Hearing. (1) Hearing officer. Postremoval hearings shall be conducted before one (1) or more hearing officers to be appointed by the Secretary of the Revenue Cabinet. The hearing officers shall be full-time employees of the Revenue Cabinet who have had no involvement in the investigation of or decision to bring the charges resulting in the PVA's removal. In the event more than one (1) hearing officer is appointed, the secretary shall designate one (1) of the hearing officers to preside over the hearing.

(2) Power and duties of the presiding hearing officer. The presiding hearing officer shall have full authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The presiding hearing officer shall fully inquire into all the facts at issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The presiding hearing officer may call and examine witnesses, direct the production of papers or documents, and admit this proof into the record of the proceedings.

(3) Procedure.

(a) The case in support of the charges against the PVA shall be presented before the hearing officer by a Revenue Cabinet attorney or Revenue Cabinet employee. The Revenue Cabinet may call and examine witnesses. The PVA or his or her counsel may cross-examine these witnesses and may present evidence and witnesses on his or her behalf. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the rules of privilege shall be given effect.

(b) All testimony shall be given under oath or affirmation and a record of the proceedings shall be made and kept.

(c) Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, may be stated orally.

(d) The presiding hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in conduct before the hearing officer that is contrary to law, disruptive or otherwise improper.

(e) All postremoval hearings shall be private unless the accused PVA requests a public hearing.

(f) The record of the proceedings before the hearing officer shall consist of the transcript of the testimony taken at the hearing, the exhibits offered in evidence, any written applications, orders and motions made by the parties, any interlocutory orders or rulings made by the hearing officer, and the hearing officer's recommended findings of fact, conclusions of law.

(g) Upon completion of both sides of the case and within thirty (30) days of the hearing, the hearing officer shall render written recommended findings of fact, conclusions of law and an order to be served upon the parties and the Secretary of the Revenue Cabinet.

(h) The Secretary of the Revenue Cabinet may accept or reject the recommended decision of the hearing officer and shall notify the PVA in writing of this decision. This decision shall constitute the final decision of the Secretary of the Revenue Cabinet and shall be made part of the record of the proceedings conducted by the hearing officer.

Section 4. Judicial Review. As provided by KRS 132.370(5), the PVA shall have the right to appeal the final decision of the Secretary of the Revenue Cabinet to a circuit court of an adjacent judicial circuit.

KIM BURSE, Secretary
APPROVED BY AGENCY: March 8, 1993
FILED WITH LRC: March 11, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 29, 1993, at 10 a.m., Rm. 408, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 24, 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: René True, Deputy Secretary, Revenue Cabinet, P.O. Box 423, Frankfort, Kentucky 40602, 502/564-7824, Fax: 502/564-2456

REGULATORY IMPACT ANALYSIS

Agency Contact: René True

(1) Type and number of entities affected: There are no entities which are affected.

(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: The procedural regulation will have a minimal effect on the Revenue Cabinet. The Secretary of Revenue or his or her designee and the hearing officer will be required to follow procedural notice requirements, conduct hearings and prepare written findings of fact and conclusions of law and a final order. A representative of the Revenue Cabinet will be required to present the Revenue Cabinet's case at the hearing.

(a) Direct and indirect costs or savings: Additional costs will include the transcribing of removal hearings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: See response to (2).

(3) Assessment of anticipated effect on state and local revenues: The regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The procedures were selected to conform to constitutional procedural due process requirements. Because KRS 132.370 provides that a PVA may be removed by final order of the Revenue Secretary and that an appeal may be taken from this final order directly to the circuit court, the removal of a PVA is not governed by the provisions of KRS Chapter 18A and separate removal procedures were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, are overlapping or will result in duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because all PVAs should be treated alike in the removal process.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:270. Special federal income tax withholding.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with the provisions of PL 102-318 regarding direct rollovers of taxable distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member or beneficiary who is the spouse, the retirement office shall mail the Form 27, Direct Rollover/Direct Payment Election Form for Refund of Member Contributions, dated December 1992, along with a copy of the Special Tax Notice Regarding Plan Payments, dated December 1992, to the individual requesting payment.

(2) The member or beneficiary who is the spouse shall complete the Form 27 and return it to the retirement office. If the member or beneficiary intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The refund of contributions shall not be processed until the completed Form 27 is returned to the retirement office.

Section 2. (1) Upon receipt of the Form 6A on which the member or beneficiary who is the spouse has selected the actuarial refund or a payment option payable for a period of less than ten (10) years, the retirement office shall mail to the member or beneficiary who is the spouse the Form 28, Direct Rollover/Direct Payment Election Form for Actuarial Refunds and Monthly Payments, dated December 1992, along with the Special Tax Notice, dated December 1992.

(2) The member or beneficiary who is the spouse shall complete the Form 28 and return it to the retirement office. If the member or beneficiary who is the spouse intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the member or beneficiary who is the spouse shall not be processed until the completed Form 28 is returned to the retirement office.

Section 3. (1) If the alternate payee is eligible for a lump sum portion of the member's contribution account under a qualified domestic relations order, the Form 27 along with a Special Tax Notice shall be mailed to the alternate payee. If the alternate payee selects an actuarial refund or payment option payable for a period of less then ten (10) years, a Form 28 along with a Special Tax Notice shall be mailed to the alternate payee.

(2) The alternate payee shall complete the Form 27 or Form 28 and return it to the retirement office. If the alternate payee intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 27 or Form 28 certifying that the rollover will be accepted.

(3) The payment under the qualified domestic relations order shall not be processed until the completed form is returned to the retirement office.

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

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: February 18, 1993

FILED WITH LRC: February 24, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 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 committee in writing by April 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact person: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment only applies to members of the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System.

(a) Direct and indirect costs or savings to those affected: This administrative regulation establishes the forms to be used by members electing a lump sum or other payment subject to new federal rollover and income tax withholding provisions.

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: Members are required to complete one form more than in the past in order to receive a refund of contributions.

(2) Effects on the promulgating administrative body: Some additional cost for printing and mailing forms 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: There are additional forms to obtain from the member and maintain in the member's records.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation contains requirements of the IRS and PL 102-318.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. This administrative regulation establishes the forms used by all members of the three retirement systems.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 17:090. Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder.

RELATES TO: KRS 304.17-319, 304.18-0365, 304.32-1585, 304.38-1937

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

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable administrative regulations he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable administrative regulations deemed necessary for the proper administration of KRS Chapter 304.38. This regulation requires health insurers,nonprofit hospital, medical-surgical, dental, and health service corporations, and health maintenance organizations which require preauthorization for coverage of temp oromandibular joint disorder to use a uniform preauthorization request form and to follow certain standards in determining whether treatment of craniomandibular jaw disorder is medically necessary.

Section 1. Definition. "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, or a health maintenance organization.

Section 2. If an insurer requires preauthorization of nonsurgical treatment for coverage of temporomandibular joint disorder, it shall require the provider of treatment to submit a properly completed temporomandibular joint disorder (TMJ) nonsurgical treatment preauthorization request form, incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 3. If an insurer requires preauthorization of surgical treatment for coverage of temporomandibular joint disorder, it shall require the provider of treatment to submit a properly completed temporomandibular joint disorder (TMJ) surgical treatment preauthorization request form, incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 4. In evaluating the information obtained pursuant to Sections 2 and 3 of this administrative regulation, insurers shall utilize the following:

(1) ICD-9-CM Diagnostic Codes for Temporomandibular Disorders.

(a) Intracapsular.

1. 719.68 Other symptoms referable to joint/deviation in form (repetitive joint noise).
2. 718.38 Disc displacement with reduction/recurrent dislocation of joint/dislocation (open lock).
3. 718.28 Disc displacement without reduction/pathological dislocation (closed lock).
4. 728.5 Hypermobility syndrome.
5. 727.09 Synovitis (previously used term: capsulitis; discitis, retrodiscitis, arthritis).
6. 716.98 Capsulitis/arthropathy, unspecified.
7. 715.38 Osteoarthrosis.
8. 715.98 Osteoarthritis/arthropathy, unspecified.
9. 714.9 Polyarthritides/unspecified inflammatory polyarthropathy.
10. 718.58 Fibrous ankylosis of joint/bony ankylosis of joint.

(b) Extracapsular.

1. 729.1 Myofascial pain/myalgia and myositis, unspecified.
2. 728.81 Myositis/myositis.
3. 728.85 Spasm/spasm of muscle.
4. 728.89 Reflex splinting/muscle contracture/muscle hypertrophy.

(2)(a) Diagnostic studies. Appropriate radiographic studies shall be done based on symptomatology.

1. ADA00330 Panoramic x-rays.
2. ADA00322 Radiograph tomogram survey (TMJ corrected angle tomogram).
3. ADA00321 TMJ transorbital/transcranial projection.
4. 70370 TMJ lateral transcranial/transpharyngeal x-rays (lateral skull).
5. ADA00290 Radiograph anterior-posterior projection of skull/head.
6. 70486 Computerized axial tomography, maxillofacial area; without contrast material.
7. 21116 Injection procedure for temporomandibular joint arthrography.
8. 70333 ADA00320 Temporomandibular joint arthrography, complete procedure.
9. ADA00470 Mounted diagnostic dental study models.
10. 20550 Injection, trigger points.
11. 70328 70330 Radiologic examination, temporomandibular joint, open and closed mouth; unilateral, bilateral (these codes shall not be used. Use one (1) of above codes).

(b) Surgery performed. 20605 Arthrocentesis, aspiration, or injections; intermediate joint (e.g., temporomandibular).

(3) Nonsurgical treatment. This subsection contains standards for submitting claims for temporomandibular joint nonsurgical treatment modalities. These claims shall be prepared using the procedure codes listed below. All codes are CPT codes unless otherwise identified. One (1) initial office visit is allowed within (1) one plan of treatment. Thereafter, the office visit(s) are included in the diagnostic studies and treatment listed below.

(a) 99201 Office and other outpatient medical services, new patient; brief service.

(b) 99215 Comprehensive history and physical examination of patient: Medical history, observations as to pain, pain analysis questionnaire, muscle and TMJ analysis and palpation, occlusal analysis, cranial nerve analysis, cervical analysis, TMJ noises, and mandibular range of motion measurements.

(c) Diagnostic studies. Not every TMJ patient requires an x-ray. Appropriate radiographic studies shall be done based on symptomatology.

1. ADA00330 or 70355 Panoramic x-rays.
2. ADA00322 Radiographic tomogram survey (TMJ corrected angle tomogram).
3. ADA00321 TMJ transorbital/transcranial projection.
4. 70370 TMJ lateral transcranial/transpharyngeal x-ray (lateral skull).
5. ADA00290 Radiograph, anterior-posterior projection of skull/head.
6. ADA00470 Mounted diagnostic models if necessary. Benefits may not provide for cephalometric x-rays for TMJ disorders. Benefits may not provide for casts and unmounted study models for diagnosis. These services may be part of the splint therapy.
7. 20550 Injection, trigger points.

(d) Treatment provided. ADA07880 or ADA 09941.

1. Splint therapy which does not result in any permanent alteration of the occlusion. Splint therapy includes post-insertion, follow-up care, and adjustments.

a. Hard acrylic splint, orthotic, etc.

b. Soft rubber mouth guard.

2. 20605 ADA07870.

a. Arthrocentesis, aspiration, or injections; intermediate joint (e.g., temporomandibular).

b. Physical therapy.

c. Benefits may not provide for behavioral modification, biofeedback, stress management, or services of a psychologist.

(4) Surgical treatment. This subsection contains standards for submitting claims for reimbursement for temporomandibular joint surgical treatment modalities. These claims shall be prepared using the procedure codes listed below. All codes are CPT codes unless otherwise identified. One (1) initial office visit is allowed with one (1) plan of treatment. Thereafter, the office visits are included in diagnostic studies and surgeries listed below.

(a) 90000 Office and other outpatient medical services, new patient; brief service.

(b) 90020 Comprehensive history and physical examination of patient. This includes the medical/dental history, observations as to pain, pain analysis questionnaire, muscle and TMJ analysis and a palpation, occlusal analysis, cranial nerve analysis, cervical analysis, TMJ noises, and mandibular range of motion measurements.

(c) Only one (1) of the following listed codes is acceptable for the surgical procedures performed on the same date of service. If bilateral procedures are performed, code each procedure separately on the claim. This may require the listing of one (1) procedure code twice.

1. 29800 Arthroscopy, temporomandibular joint, diagnostic, with or without biopsy, includes irrigation and debridement (separate procedure).

2. 29804 Arthroscopy, temporomandibular joint surgical (includes all arthroscopic reconstruction arthroplasties of the temporomandibular joint, resection of adhesions and joint lavage, etc.).

3. 21240 Arthroplasty, temporomandibular joint, with or without autograft (includes obtaining graft).

4. 21242 Arthroplasty, temporomandibular joint, with allograft (interpositional material such as silastic to replace the meniscus).

5. 21243 Arthroplasty, temporomandibular joint, with prosthetic joint replacement (operative report shall be included with claim).

6. 21010 Arthrotomy, temporomandibular joint (this code is part of 21240, and 21243. Charges may not be accepted for 21010).

7. Physical therapy.

Section 5. This section contains standards for evaluation of claims for craniomandibular (jaw or orthognathic) disorders for medical necessity. To evaluate appropriately a claim for correction of a craniomandibular (jaw or orthognathic) disorder, the existence of a skeletal disorder shall be documented. Any craniomandibular (jaw, orthognathic) maldevelopment that is not correctable with conventional orthodontic treatment, yielding a stable and functional post-treatment occlusion without worsening the patient's original aesthetic condition, shall be a covered surgical procedure.

(1) Indications for craniomandibular (jaw, orthognathic) surgery shall include evidence of at least one (1) of the following:

(a) Physical evidence of musculoskeletal, dento-osseous, or soft tissue deformity.

(b) Imaging evidence of musculoskeletal, dento-osseous, or soft tissue deformity:

1. Deviation form cephalometric norms; or

2. Other imaging disclosure of abnormality.

(c) Malocclusion deviating from a normal occlusal relationship that cannot reasonably be corrected by nonsurgical means (e.g., orthodontics or prosthetics).

(d) Inability to open or close the jaws adequately.

(2) The following data shall be submitted so that claims may be evaluated appropriately:

(a) A narrative of the patient's presenting clinical condition with appropriate ICD-9 diagnostic codes (subsection (13) of this section) and appropriate CPT codes for treatment (subsection (4) of this section).

(b) Study models with appropriate bite registration.

(c) Intra-oral and extra-oral photographs.

(d) Cephalometric x-ray.

(e) The data required in paragraphs (b), (c), and (d) of this subsection may be substituted with appropriate paper documentation using current computer imaging systems that have the ability to photograph all necessary information including appropriate views of study models. This allows the submission of paper documentation rather than the bulky study models and bite registrations.

(3) The following ICD-9 code shall be used in determining whether treatment of craniomandibular (jaw, orthognathic) disorder is medically necessary:

(a) 524.0 Major anomalies of jaw size.

1. Hyperplasia.

2. Hypoplasia (maxillary, mandibular).

3. Macrognathism (maxillary, mandibular).

4. Micrognathism (maxillary, mandibular).

5. Macrogenia (maxillary, mandibular).

6. Microgenia (maxillary, mandibular).

(b) 524.1 Anomalies of relationship of jaw to cranial base.

1. Asymmetry of jaw.

2. Prognathism (maxillary, mandibular).

3. Retrognathism (maxillary, mandibular).

(c) 524.2 Anomalies of dental arch relationship.

1. Crossbite (anterior, posterior).

2. Disto-occlusion

3. Mesio-occlusion.

4. Midline deviation.

5. Open bite (anterior, posterior).

6. Overbite (excessive): deep, horizontal, or vertical.

7. Overjet.

8. Posterior lingual occlusion of mandibular teeth.

9. Soft tissue impingement.

(d) 524.5 Dentofacial functional abnormalities.

1. Abnormal jaw closure.

2. Malocclusion due to abnormal swallowing, mouth breathing, and tongue, lip, or finger habits.

(e) 526.89 Unilateral condylar hyperplasia or hypoplasia of mandible.

(f) 754.0 Hemifacial atrophy or hypertrophy.

(4) The following CPT codes shall be used in determining whether treatment of craniomandibular (jaw or orthognathic) disorder is medically necessary:

(a) Mandible.

1. Mandibular sagittal split osteotomy.

a. Without rigid fixation: right 21195; left 21195.

b. With rigid fixation: right 21196; left 21196.

2. Mandibular ramus osteotomy (Horizontal, Vertical, C or L).

a. Without graft: right 21193; left 21193.

b. With graft: right 21194; left 21194.

3. Mandibular segmental osteotomy: 21198.

4. Genioplasty (Augmentation, sliding): 21120.

5. Genioplasty (Reduction, sliding): 21121.

(b) Maxillae.

1. LeForte I maxillary osteotomy.

a. Single piece: 21144.

b. Single piece with graft: 21145.

2. LeForte I maxillary osteotomy (segmental).

a. Two (2) or more pieces: 21146.

b. Three (3) or more pieces: 21147.

3. LeForte II.

a. Without graft: 21150.
b. With graft: 21151.
4. LeForte III.
a. Without graft: 21154.
b. With graft: 21155.
(c) Osteoplasty (Facial bones).
1. Augmentation: 21208.
2. Reduction: 21209.
(d) Cotreatment.
1. Assistant surgeon: Modifier 80.
2. Cosurgeon: Modifier 62.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 23, 1993
FILED WITH LRC: March 3, 1993 at 11 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for April 21, 1993, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, PO Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on April 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts
Need for the Proposed Regulation: The 1990 General Assembly adopted legislation requiring insurers, nonprofit health service plans, and health maintenance organizations providing coverage on an expense-incurred basis for surgical or non-surgical treatment of skeletal disorders to provide coverage for medically-necessary procedures relating to temporomandibular joint disorders and craniomandibular jaw disorders. The requirement applies to all contracts delivered, issued for delivery, or renewed in Kentucky on or after January 1, 1991. Some insurers, nonprofit health service plans, and health maintenance organizations require preauthorization of treatment to determine whether it is medically necessary as a condition of coverage. This is a valuable cost containment tool since treatment of TMJ and CMJ can be expensive. However, preauthorization procedures for different insurers are often conflicting. In order to provide health care providers with simplified procedures, insurers, nonprofit health service plans, and health maintenance organizations are required by the proposed administrative regulation to use standardized forms in preauthorizing treatment for TMJ and CMJ.
(1) Type and numbers of entities affected: There are 1,200 insurers authorized to transact health insurance in Kentucky. However, an unknown, although much smaller, number actually issue expense-incurred health contracts.
(a) Direct and indirect cost or savings to those affected:
1. First year: Insurers will have to print forms and establish procedures. Health care providers will also be affected, and the Department has received a commitment from the Kentucky Dental Association to circulate the final text of the regulation to all dentists licensed to practice in Kentucky.
2. Continued cost or savings: Procedures will have to be in place to comply with the regulation in succeeding years.
3. Additional factors increasing or decreasing costs: None.
(b) Reporting and paperwork requirements: The standardized forms must be used if preauthorization is required for coverage of non-surgical or surgical treatment of TMJ or CMJ. (2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The Department will notify all affected insurers, nonprofit health service plans, and health maintenance organizations of the regulation.
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 only alternative is to leave current practices in place. These practices involve different insurers requiring different procedures for preauthorization in order to determine whether treatment is covered. The Department has received persistent complaints from a health care provider that these procedures are confusing. Therefore, the Department decided to promulgate an administrative regulation to standardize procedures.
(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None.
Tiering: Tiering is used in that different preauthorization request forms are used for non-surgical and surgical treatment.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 30:090. Insurance premium finance company proof of mailing of cancellation notice.

RELATES TO: KRS 304.30-110
STATUTORY AUTHORITY: KRS 304.2-110, 304.30-070
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 provides that the Commissioner of Insurance has the authority to make and enforce such reasonable administrative regulations as may be necessary to make effective the provisions of KRS Chapter 304.30 and to establish the manner in which insurance premium finance companies shall conduct their business. This administrative regulation requires insurance premium finance companies to maintain written proof of mailing of notice of cancellation of insurance policies.

Section 1. (1) Insurance premium finance companies shall maintain written proof of mailing of the notices of cancellation required by KRS 304.30-110(2) and (3).
(2) The written proof of mailing required by subsection (1) of this section shall be a receipt provided by the United States Postal Service.
(3) If an insurance premium finance company does not maintain the proof of mailing required by subsection (1) of this section, the purported notice is void.

Section 2. This administrative regulation applies to notices mailed on or after thirty (30) days from the effective date of this administrative regulation.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 23, 1993
FILED WITH LRC: March 3, 1993 at 11 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for April 21, 1993, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must

be received prior to 9 a.m. (ET), on April 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts

Need for the Proposed Administrative Regulation: Recent enforcement activities of the Department of Insurance show that insurance premium finance companies do not document the mailing of notices of cancellation required by KRS 304.30-110(2) and (3). This leaves uncertainty as to whether insurance coverage is in effect. The proposed administrative regulation requires insurance premium finance companies to maintain written proof of mailing of cancellation notices in the form of a receipt provided by the United States Postal Service. If an insurance premium finance company does not maintain the required proof of mailing, the purported notice is void. Insurance premium finance agreements typically provide that the insurance premium finance company will pay the premium and the insured/debtor will pay installments to the insurance premium finance company and grant a power of attorney to the insurance premium finance company to cancel the insurance policy if the insured/debtor does not make the installment payments to the insurance premium finance company. Under KRS 304.30-110(2), if the insurance premium finance company plans to exercise its power of attorney, it is required to mail a warning notice to the insured/debtor. Under KRS 304.39-110(3), if the insurance premium finance company exercises its power of attorney to cancel the insurance policy, it is required to mail notice of this fact to the insured/debtor. In a recent enforcement file, a question was raised as to whether the notice was mailed by the insurance premium finance company. When the Department of Insurance requested the insurance premium finance company to provide documentation that it had mailed the notice of cancellation, the insurance premium finance company replied that it did not maintain documentation of mailing of notices because Kentucky law does not require it to maintain documentation of mailing. The only documentation which the insurance premium finance company could produce was that its computer system generated a notice form. According to the insurance premium finance company involved in that case, the mailing service it employed would not produce proof of mailing. In order to eliminate uncertainty such as this, the proposed administrative regulation requires insurance premium finance companies to maintain written proof of mailing of cancellation notices in the form of a receipt provided by the United States Postal Service. Failure to maintain the required proof of mailing voids the purported notice.

(1) Type and number of entities affected: There are 46 insurance premium finance companies licensed to do business in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: Insurance premium finance companies will have to implement a system to maintain the required proof of mailing. Insurance premium finance companies have advised counsel for the Department of Insurance that they are able to provide proof of mailing in other states which require proof of mailing to be maintained. Therefore, it appears that there are systems in place which can simply be extended to apply to insurance premium finance agreements entered into by Kentuckians.

2. Continued cost or savings: Insurance premium finance companies will have to maintain written proof of mailing of cancellation notices.

3. Additional factors increasing or decreasing costs: The proposed administrative regulation applies to cancellation notices mailed on or after 30 days from its effective date, allowing time for implementation.

(b) Reporting and paperwork requirements: Insurance premium finance companies must maintain written proof of mailing of cancellation notices in the form of a receipt provided by the United States Postal Service.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will realize savings in that its authority to require insurance premium finance companies to maintain written proof of mailing of cancellation notices will be clarified.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to allow insurance premium finance companies to continue to cancel policies without maintaining written proof of mailing of cancellation notices. Since there are documented instances of problems created by failure to maintain written proof of mailing of cancellation notices, an administrative regulation is being promulgated to eliminate this problem.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

Tiering: Tiering is not applied since all insurance premium finance companies must meet the same standards in maintaining written proof of mailing of cancellation notices.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 30:100. Time limit for insurance premium finance company responses to Department of Insurance inquiries.

RELATES TO: KRS 304.30-050, 304.30-060

STATUTORY AUTHORITY: KRS 304.2-110, 304.30-070

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 provides that the Commissioner of Insurance has the authority to make and enforce such reasonable administrative regulations as may be necessary to make effective the provisions of KRS Chapter 304.30 and to establish the manner in which insurance premium finance companies shall conduct their business. This administrative regulation requires insurance premium finance companies to respond to inquiries from the Department of Insurance within twenty-one (21) days of the date of the inquiry.

Section. 1. Insurance premium finance companies shall furnish a complete response to the Department of Insurance within twenty-one (21) days of the date of a Department of Insurance inquiry.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: February 25, 1993

FILED WITH LRC: March 3, 1993 at 11 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for April 21, 1993, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on April 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts

Need for the Proposed Administrative Regulation: In a recent Department of Insurance enforcement file, an insurance premium finance company failed to respond to Department of Insurance inquiries for two months, even though the insurance premium finance company received these inquiries. While this is a rather obvious example of incompetence, there is no specific statute or regulation which requires insurance premium finance companies to respond to Department of Insurance inquiries within a certain time period. Since the Department of Insurance cannot carry out its duties to protect the public unless it can obtain responses from its licensees, this administrative regulation requires insurance premium finance companies to respond to Department of Insurance inquiries within 21 days of the date of a Department of Insurance inquiry.

(1) Type and number of entities affected: There are 46 insurance premium finance companies licensed in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: Insurance premium finance companies must establish a system to assure that they respond completely to Department of Insurance inquiries within 21 days of the date of the inquiry.

2. Continued cost or savings: Insurance premium finance companies must maintain a system to assure that they respond to Department of Insurance inquiries within 21 days of the date of the inquiry.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Insurance premium finance companies must respond to Department of Insurance inquiries within 21 days of the date of the inquiry.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Insurance will no longer have to make repeated demands on insurance premium finance companies to obtain responses to Department of Insurance inquiries. Insurance premium finance companies which fail to comply will be subject to disciplinary action.

2. Continued costs or savings: The Department of Insurance will be able to require insurance premium finance companies to provide complete responses to Department of Insurance inquiries within 21 days of the date of the inquiry.

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: An alternative would be to have no provision requiring insurance premium finance companies to respond to the Department of Insurance within a specified period of time. Since there are documented instances of problems created by insurance premium finance companies failing to respond to the Department of Insurance, this administrative regulation is being promulgated to require insurance premium finance companies to respond to Department of Insurance inquiries within 21 days of the date of the inquiry.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

Tiering: Tiering is not used since the proposed administrative regulation should apply to all insurance premium finance companies equally.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:512. Incorporation by reference of the psychiatric residential treatment facility services manual.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the psychiatric residential treatment services component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and 907 KAR 1:505, Psychiatric residential treatment facility services, the latter shall prevail.

Section 1. Incorporation by Reference. the cabinet hereby incorporates by reference the Psychiatric Residential Treatment Facility Services Manual, dated March 1, 1993, 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.

JANIE A. MILLER, Acting Commissioner

FONTAINE BANKS, JR, Secretary

APPROVED BY AGENCY: February 16, 1993

FILED WITH LRC: March 2, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 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 April 16, 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: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Janie A. Miller

(1) Type and number of entities affected: All participating providers of the psychiatric residential treatment 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 regulations, 907 KAR 1:016 and 907 KAR 1:505.

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the March 1 and 2, 1993 Meeting

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 1, 1993, at 2 p.m. and Tuesday, March 2, 1993 at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the February 1 and 2, 1993 meeting were approved.

Present were:

Members: March 1, 1993: Representative Tom Kerr, Chairman; Senators Tom Smith and Gene Huff; Representatives Woody Allen, and James Yates. March 2, 1993: Representative Tom Kerr, Chairman; Senator Gene Huff; Representatives Jim Bruce and James Yates.

Guests: Richard Casey, Paul P. Borden, Kentucky Higher Education Assistance Authority; George Russell, Anita Taylor, Registry of Election Finance; Hanson Williams, Personnel Board; Craig Martin, Harold Loy, Kentucky DES; John Ackman, Sue Teegarden, Chris Alford, Kentucky Real Estate Commission; Carroll Roberts, Board of Hairdressers; Dave Nicholas, Division of Occupations & Professions; Conley C. Congleton, Chiropractic Examiners; Thomas A. Young, Ted Crowell, Jeff Sole, Grant Winston, Department of Fish & Wildlife Resources; Sandy Pullen, Transportation Cabinet; Steve Smith, Jack Damron, Department of Corrections; Kevin Noland, Ed Reidy, C. Scott Trimble, Perry Watson, Mike Roscoe, Department of Education; Erin Foley, Kembra Sexton Taylor, Labor Cabinet; Michael Cheek, Danna Droz, Timothy A. Sturgill, Jean Cole, Karen Doyle, Eric Friedlander, Barbara Coleman, Lydia Roberts, Bess Howard, Dudley J. Conner, Anita Travis, Clifford Jennings, Cabinet for Human Resources; Don Hines, DEA; Nolan Benton; Charles A. Wheeler, Tattoo Charlie's; Carolyn Covington, Child Care Council; Libby Grever, Community Coordinated Child Care; Renegade, Tattoos by the Renegade; D. A. Huffman Brovage, Ray Smith Tattoo Studio; Frank Shipman; Vicki Davis, Pam Dawson, Scott County CCR&R; Anne Catron, Queen of Hearts Tattoos; Marinell Cobb Brown, Kentucky Tech; Jim B. Byrum, Kentucky Education Association; James D. Carloss, Kentucky Association of Realtors; Carl Metz.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, and Susan Eastman.

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:

Cabinet for Human Resources: Department for Social Services: Day Care

The following persons presented testimony: Elizabeth A. Grever, Exec. Director, Community Coordinated Child Care (Louisville); Carolyn Covington, Director of the Child Care Council (Lexington); Frank Shipman; Marinell C. Brown, Child Development Instructor, Kentucky Tech (Covington); Noland Benton, Owner of a Type II Facility (Richmond); Cliff Jennings and Lydia Roberts, CHR, Department for Social Services.

STAFF TO CHILD RATIO

Elizabeth Grever and Carolyn Covington stated that they were in favor of the Cabinet's proposed staff-child ratio in the birth to infant category. Ms.Covington agreed with the reduction of the ratio from 1:6 to 1:5 children in the birth to infant category. She stated that numerous studies have shown that lower staff to child ratios, particularly in groups of very young children, enhance the quality of the care provided.

Frank Shipman objected to the reduction in the staff-child ratio, because he believed the reduction in the birth to 1 year category will increase the general costs to operate a facility. He stated that labor costs are a major portion of day care operational costs, and that the labor cost would increase by: (1) for large day care facilities, 16% or 18%; and (2) for smaller day care facilities, up to 20%. He also estimated, that in a Type II facility, the costs increase under these administrative regulation would be between 33% to 67%.

Mr. Shipman stated that: (1) administrative regulations which apply to large, Type I facilities, often impose burdens, and unfair, and cumbersome restraints on smaller, in-home, Type II facilities; (2) requirements that are appropriate for a commercial facility, are not appropriate for a home; and (3) the Cabinet should regulate these two distinct types of facilities in two separate administrative regulations.

Mr. Shipman also stated that the staff-child ratio and maximum group size should: (1) not be determined by the youngest child in the group; and (2) be based on the age of the children in the group.

Mr. Jennings replied that the Cabinet: (1) is concerned with the ability to enforce standards and best practices; and (2) believes, based on research information, that the "age of the youngest child" is the best standard to use in determining the ratio and the maximum group size.

Chairman Kerr supported Mr. Shipman's proposal to base the ratio on the age of the group. Mr. Jennings stated that the Cabinet received 61 comments on the ratio issue: (1) 23 requested that the ratio remain at 1 staff to 6 children; (2) 5 supported the national standards of 1:4 or 1:3; and (3) 33 supported the new 1:5 ratio.

With regard to Type II licensed family day care facilities (905 KAR 2:120, Section 1), Mr. Benton expressed concern over the cost implications of decreasing the staff-child ratio in the birth to infant category. He stated he had asked the Cabinet to reconsider using the "youngest child" as the basis for determining the staff-child ratio. Mr. Benton proposed an amendment to this section that would retain the 1:6 ratio in the birth to 1 year category.

Representative Allen asked to what extent the new staff-child ratio would increase the cost of child care in Kentucky. He stated that lowering the ratio means that increased costs due to the lower ratio will be passed on to the other children, and are often paid by single working mothers. He believed that any cost increase would prevent many lower income families and single working mothers from placing their children in a facility, forcing them to leave children at home unattended.

Mr. Jennings presented a lengthy historical overview of the development of the proposed administrative regulations to show that the Cabinet believes every effort has been made to weigh competing interests: the Cabinet's need for quality child care in Kentucky, and the parents and providers interest in providing quality affordable care.

Representative Allen asked what services could be provided with a 1:5 ratio, that would not be available to children in a 1:6 child ratio.

Ms. Roberts replied that a volume of research reveals that a strong indicator of quality child care is a lower staff-child ratio. She stated that: (1) safe conditions are more easily provided if there are fewer children; (2) safety is a concern with younger children, such as infants; (3) with a smaller number of infant children, more services can be provided, and more individual attention can be given; and (4) the Cabinet's ratio (1:6, dropping to 1:5 in July, 1993) compares favorably with the national standard of 1:4 children, and the Pediatric Health Standards' ratio of 1:3, for out-of-home care givers.

Representative Allen reiterated his concern over mothers or families who are not able to afford child care services, and pointed out that the Cabinet's proposed changes may preclude use of such services altogether.

Mr. Jennings responded that there are programs in place which provide services for low-income parents who may need to work, return to school or attend a job training program. Representative Bruce asked: (1) about the effect of the ratio on the JOBS program participants and the Cabinet's budget; and (2) the approximate

number of infants participating in the JOBS program who receive child care. Mr. Jennings stated that a recent count showed that the program serves 250 infants, and that this shows that the effect of the ratio on the Cabinet's current budget will be minimal.

Representative Allen asked whether the costs would decrease as the ratio for each consecutive age group increases. Cabinet personnel confirmed that this would be likely, particularly with the older age categories of children.

Ms. Roberts stated that through the benefit of federal child care monies and a smaller amount of state matching funds, the Cabinet is able to provide child care assistance to parents, currently serving approximately 17,000 children a month.

Senator Smith asked what ratio is used in a hospital setting where infants are being served.

Ms. Grever responded that the ratio is about 1:4, but that those infants are generally receiving critical care and are not crawling.

Representative Bruce stated that costs to parents and children must be the primary consideration, regardless of an ideal standard or ratio.

Senator Smith agreed with Representatives Allen and Bruce that costs are a real consideration for most families in his district. He stated he knew of several families in which one parent had been forced to quit work in order to stay at home and care for the children. He added that: (1) financial strains on families lead to more child abuse and divorce; and (2) in his district a day care facility that was one of the best in the state., had to close because regulatory requirements had increased costs.

Ms. Roberts stated that the: (1) administrative regulations reflect a lengthy and well-deliberated process that was open to parents, providers and individuals in the child care profession; (2) Cabinet received numerous comments on many of the issues the Subcommittee has discussed; (3) Cabinet was also concerned that cost plays a major consideration in quality child care, but felt that good service is also an important issue; and (4) the administrative regulations were not ideal, but were intended to establish minimum standards.

Chairman Kerr pointed out that the RIA for 905 KAR 2:120 states that the Cabinet plans to survey increased costs to providers in October, 1993. He asked why the potential costs increase to the state and individuals, due to the new ratio for infants, had not been analyzed in advance of the promulgation of these administrative regulations. He stated that he was concerned that the Cabinet proposes to assess these costs after the administrative regulations have gone into effect.

Representative Bruce stated that if the Cabinet elects to retain the 1:5 ratio, he recommended freezing child care rates.

Representative Allen asked what the average costs per child, per week, is in the state of Kentucky. Ms. Grever responded that the state reimbursement rate for subsidized care for infants is $15 dollars per day, or $75 dollars per week.

ADDITIONAL TRAINING REQUIREMENTS (905 KAR 2:001, Section 1 (17 and (18), and 2:110 Section 3)

Ms. Grever stated that: (1) she supported the additional training requirements; (2) the 12 hours per year is a minimal step toward providing high quality care for children; and (3) research has shown that training the providers have received in early childhood education would enhance the quality of care.

Ms. Covington stated that she supported the new training requirements imposed by the Cabinet.

Mr. Shipman: (1) stated that an owner-director of a Type II facility works at least 55 hours per week, and spends additional time with cleaning and record keeping tasks; (2) objected to the additional training requirements,stating that most Type II day care directors have met the educational requirements and experience; (3) recommended that the 12 hours of annual training be required only for the first three years of the directorship, and be reduced to 6 hours thereafter; (4) believed that directors should need only a minimal amount of annual refresher courses covering new techniques and new administrative regulations.

Chairman Kerr raised the issue of provider and staff training. Mr. Jennings stated that Senate Bill 211 requires: (1) 8 hours of CPR and 4 hours of first aid; (2)(a) in an employee's or director's first year of employment, a minimum of 6 hours of training in orientation and child development and 6 hours of annual training; and (b) in subsequent years, 6 hours of annual education.

Mr. Jennings added that: (1) the Cabinet emphasized quality of care consistent with the health and safety of children; (2) education and training of caregivers, are essential for health and safety; (3) the 12 hours of required annual training, and the 12 hours of orientation and child development training, exceeded the statutory minimum of 6 hours; (4) one of the leading indicators of quality care is the amount of training a caregiver receives; and (5) Senator Johns, a major participant on the Child Care Policy Council and a leader in the passage of new child care legislation, favored both the staff-child ratio and the additional training requirements.

DIRECTOR OR PROVIDER QUALIFICATIONS (905 KAR 2:120)

Ms. Grever stated that she supported the Cabinet's requirements for directors and providers.

Chairman Kerr acknowledged correspondence received by Ms. Grever who: (1) raised the issue of requirements for a director or provider; and (2) proposed an amendment to 905 KAR 1:110, Section 3(c)8, that would allow a director or provider who has obtained 3 years of verifiable full-time paid experience in a "regulated early childhood program", rather than a person with experience in a "licensed day care facility", including persons who receive their experience in school-based programs that follow guidelines from the Department of Education. After discussions between Ms. Grever and Cabinet personnel, the Cabinet stated that it was proposing an amendment at this meeting to address her concerns.

Ms. Covington commended the Cabinet's effort to toughen the director qualifications, stating that the criteria for a directorship are instrumental in promoting quality child care.

Ms. Brown addressed 905 KAR 2:110, Section 3(1)(c)7., which established director qualifications for persons obtaining a certificate or diploma in Child Development Services from a Kentucky Tech School. She stated that: (1) she has been a child development instructor and educator at Kentucky Tech for over 15 years; (2) the requirements for a "Teacher Preschool" diploma is comprehensive, and consists of 1,085 curriculum hours; (3) a "Teacher Preschool" graduate has approximately 2 times the clock hours of a person who receives a child care certificate; and (4) Kentucky Tech offers a third curriculum track, "Director Preschool Diploma", which requires 1,335 clock hours of education.

Ms. Brown suggested that 905 KAR 2:110, Section 3(1)(c)7., should be amended to include the "Teacher Preschool Diploma" and delete the reference to a "Child Care Certificate". She stated that the Cabinet recognizes the highest level of "Director Preschool Diploma", but that the administrative regulation does not permit a graduate with a "Teacher Preschool Diploma" to qualify as a director of a facility.

Ms. Brown stated that this administrative regulation would permit a high school graduate to become a director of a facility if he had: (1) enrolled in a child development services program at a high school; and (2) obtained a certificate as a Child Care Assistant. She objected on the grounds that such a graduate would not have received instruction in facility management, curriculum development and numerous courses not included at this level. Ms. Brown added that the Cabinet has indicated that this administrative regulation will be enforced by requiring a "Director Preschool Diploma" for a Type I facility, and a "Child Care Assistant Certificate" for Type II facilities. Ms. Brown requested that, if the Cabinet intends to allow an "assistant" to qualify as a director, language should be added to provide that a "Child Care Assistant" would qualify only for a Type II facility.

The Cabinet agreed to amend 905 KAR 2:110, Section 3(1)(c)7., by inserting a reference to the "Teacher Preschool Diploma".

Mr. Benton stated that the director qualifications found in 905

KAR 2:110, Section 3(1)(c)8. are burdensome for a Type II facility because: (1) the requirement in Section 3(1)(c)8., as amended, requires "three years of verifiable full-time paid experience working in a licensed day care facility or certified family child care home"; (2) this provision may be appropriate for a Type I facility, but is too stringent for a Type II home facility; and (3) this criteria will prevent the opening of new Type II home facilities throughout Kentucky, and force parents to take their children to the only available facility in their area, which would likely be a Type I facility.

Chairman Kerr agreed with Mr. Benton that a parent with extensive experience in raising children would be unable to qualify as a director of a facility. He informed the Subcommittee that, under 905 KAR 2:110, Section 3(1)(c)3, a: (1) person with a master's or bachelor's degree in mathematics or statistics would qualify as a director of a facility; (2) Doctor of Medicine would not qualify as a director, since the medical and legal professions do not require a master's degree as a prerequisite to a doctoral program.

Senator Smith stated that stringent administrative regulations simply operate to eliminate competition and result in increased child care rates.

CORPORAL PUNISHMENT (905 KAR 2:130)

Ms. Grever stated that she supported the restriction on the use of corporal punishment.

On a number of occasions, Senator Huff had objected to the prohibition against the use of corporal punishment. Senator Smith also objected the restriction on the use of physical discipline, and asked Ms. Grever in what other ways a child could be effectively disciplined. She responded that other measures, such as removing the child from the situation or segregating the child to allow the child to settle down, are much more effective. She added that directors of child care facilities throughout the state support the ban on the use of corporal punishment in child care facilities.

Senator Smith responded that children often spend more time in day care than they do at home with their parents, and discipline is critical in grooming responsible and well-behaved young adults. Ms. Grever stated that "discipline" means to learn and that there are more effective ways to learn self-control.

MISCELLANEOUS ISSUES (905 KAR 2:120, Sections 5(1)(j) and 5(3)(c),(d), and (e))

Mr. Shipman: (1) objected to the separate lavatory requirement in Section 5(1)(j) and the segregation of age groups in Section 5(3)(c),(d),(e),; and (2) stated that a Board of Appeals and a formal procedure governing facility design and enforcement of conflicts in regulatory requirements should be established.

Written comments were received from: Sherri Pugsley (Louisville); Deanna Haeberlin, DBA D's Loving Day Care (Louisville); Susan Yates (Louisville); Jewell Deene Ellis, Department of Education (Frankfort); Peggy Browning (Covington); Susan Henson, Department of Education (Frankfort); Sherry Baber, Kentucky Tech (Owensboro) and John Horton, Cabinet for Workforce Development (Frankfort). These comments addressed the following issues: (1) 905 KAR 2:120, Section 5(1),(3), prohibiting the use of a kitchen in a Type II facility for children's activities; and (2) 905 KAR 2:120, Section 3(c)8, establishing director qualifications.

The Subcommittee approved a motion to amend: (1) 905 KAR 2:110, Section 3(1)(c)6., by inserting after "(CDA)", "plus one (1) year of verifiable full-time paid experience working in a licensed day care facility or certified family child care home;"; (2) 905 KAR 2:110, Section 3(1)(c)7., by inserting a reference to the "Teacher Preschool Diploma"; and (3) 905 KAR 2:120, Section 2(3)(a), by requiring that a child's medication records be retained by the facility for a period of two years.

The Subcommittee approved a motion by Representative Allen to find these administrative regulations deficient on the grounds that they exceed statutory authority and vitiate statutory intent.

Chairman Kerr recommended that these existing administrative regulations be recalled at the May meeting. He asked Subcommittee staff about the proper procedure for reconsidering these administrative regulations. Subcommittee staff stated that these administrative regulations were not "existing" administrative regulations, and could not be recalled as such. They would become existing administrative regulations only after the second committee review, or thirty days after referral to the second committee, if the second committee does not meet to consider them. Subcommittee staff suggested that these administrative regulations be reconsidered after the expiration of this period. Chairman Kerr agreed and suggested that: (1) Cabinet personnel meet with Subcommittee staff, members, and concerned parties, to discuss amendments; and (2) if the issues are resolved and amendments proposed, the Subcommittee would consider removing the finding of deficiency. Senator Smith: (1) stated that he would not support these administrative regulations until after he had received and reviewed a detailed fiscal impact and the comments submitted by concerned parties; and (2) requested a list of names and addresses of his constituents who attended or submitted comments at the Cabinet's public hearing.

Senator Smith stated that his reasons for supporting a finding of deficiency were because: (1) the Cabinet had not addressed the possible fiscal impact; (2) the new requirements in these administrative regulations could not be met, particularly since the state will suffer a $68 million budget deficit; and (3) his constituents and parents throughout the state already have a difficult time finding quality, affordable day care for their children.

Senator Smith and Representative Allen stated that state government cannot regulate every detail of child care.

905 KAR 2:001. Definitions for Title 905 Chapter 2.
905 KAR 2:011. Repealer of 905 KAR 2:010.
905 KAR 2:090. Child care facility licensure.
905 KAR 2:110. Child care facility provider requirements.
905 KAR 2:120. Child care facility health and safety standards.
905 KAR 2:130. Child care discipline.

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 5:130. Student application. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation" pursuant to KRS 13A.010(2); (2) State in the tiering statement that failure to apply the provisions of this administrative regulation to all regulated entities would violate 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, because all members of a regulated class must be treated equally; and (3) Provide in Section 1 that an individual who files a financial aid (FAFSA) form shall not have applied for a KHEAA grant for any academic year in which: (a) none of the institutions he applies to participate in the KHEAA grant program; (b) he is not a United States citizen or eligible noncitizen; (c) he is not a resident of Kentucky; (d) he is a graduate student; or (e) he will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.

Cabinet personnel stated that: (1) many students ineligible for KHEAA grants fill out the FAFSA as a routine part of applying to colleges or universities; and (2) the amendment to Section 1 of this administrative regulation: (a) specifically excludes ineligible students from consideration for KHEAA grants; and (b) exempts the Cabinet from having to send out rejection notices to those students who have not even applied for KHEAA grants.

11 KAR 5:145. CAP grant award determination procedure. This administrative regulation was amended to: (1) Insert the word "administrative" before the word "regulation", pursuant to KRS 13A.010(2); (2) State in the tiering statement that failure to apply the provisions of this administrative regulation to all regulated entities

would violate 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, because all members of a regulated class must be treated equally; and (3) Provide in Section 3 that the CAP grant award shall be the: (a) lesser of the prevailing full-time student tuition charge at publicly supported community colleges; or (b) amount of eligibility the student has remaining within the aggregate KHEAA grant limit. The Council on Higher Education held public hearings on tuition charges at state institutions and determined to increase the permissible tuition charges. Cabinet personnel stated that the amendment to Section 3 was requested to correlate the CAP Grant award to the tuition charged at public community colleges.

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:100. Post-election and supplemental reports. KRS 121.180(4) refers to "post-election reports" and does not make a distinction between post-primary and post-regular election reporting. Section 3 of this administrative regulation was amended to add a procedure for attribution of "post regular election" contributions, expenditures and debts.

Registry legal counsel explained that: (1) subsequent to a primary election, if a candidate, campaign committee or political issues committee has additional monies or debts, these must be reported in a 32-day post election report with the Registry; and (2) under KRS 121.180(7) a candidate is also required to submit a "supplemental report" after the primary if monies are retained or debts incurred. She stated that in the past it was unclear how and when a candidate would report monies collected after the primary for the general election.

Counsel for the Registry stated that: (1) this administrative regulation was promulgated to establish clear distinctions between primary contributions and expenditures, and general elections contributions and expenditures; (2) any monies collected after midnight, local time, on the date of the primary election, can only be used, and attributed, toward the general election, and cannot be used to pay primary expenses; (3) this means that a candidate is required to report contributions received after midnight on a 32-day pre-general election report; (4) a candidate filing the 32-day post primary and 60-day supplemental report would indicate on the report any debts and whether these will be assumed by the candidate; (5) any monies carried forward must be attributed to the general election and would also be reflected on these reports; and (6) this procedure will benefit candidates and the Registry by preventing the inadvertence or confusion of commingling of funds from the primary and general election when a candidate receives contributions for the general election, yet still has outstanding debts from the primary.

Chairman Kerr asked whether a person who carries a debt incurred prior to 1989 can still raise monies to defray that debt. The Registry counsel stated that monies could be raised to defray a debt incurred prior to 1989, and that the law was changed to provide that, after 1989, post election contributions could not be used to defray the debts of a previous election.

Representative Allen asked whether a candidate is required to state in a post election report that he uses his own monies and is not accepting contributions. Registry counsel stated that if a candidate has debts remaining from a post-1989 primary, the only money that can be used to defray these debts is a candidate's own money.

Senator Smith asked why the Registry needed this administrative regulation since contributions received before midnight on the day of the primary and subsequent monies remaining after the primary election can be used for the general election. The Registry counsel explained that: (1) the Registry is more concerned with attributing contributions to the right election, rather than placing an emphasis on a candidate's debts; and (2) this administrative regulation is necessary to prevent confusion and the inadvertent commingling of general election contributions to pay primary debts.

Chairman Kerr asked if the midnight deadline refers to the date of the primary. Counsel stated that: (1) the deadline set at 12:00 midnight, local time, is imposed at midnight on the day of the election; and (2) that monies may be attributed to the primary if contributions in the form of checks have been received after the deadline, and have been dated and postmarked prior to the deadline. She added that the candidate must provide proof that the checks were post marked on or before midnight on the day of the primary.

Chairman Kerr asked if this policy was stated in the administrative regulation. Registry representatives responded that this information is not in this administrative regulation, but is the policy and practice of the Board and reflected in the Board's minutes.

Senator Smith stated that a check may predate the primary and be hand carried to a candidate, but often not received by the candidate until after the primary deadline. Registry representatives responded that: (1) once a contribution is received after the election, a candidate has five days to deposit it into a bank; and (2) this contribution would be treated separately.

Senator Huff asked if there were any remaining ambiguities relating to distinctions between the primary and general elections in the election laws. He explained that, in the past, a reference to an "election" did not necessary include a "primary" election. Registry representatives responded that certain distinctions exist for write-in votes, which are not permitted in the primary, but are permissible in the general election if a candidate makes a declaration.

Senator Huff explained that he understood there were other distinctions, and would find the statutory citations and discuss those further with the Registry. Registry representatives informed the Subcommittee that the Registry has several recommendations for the next General Assembly that would eliminate any remaining confusion.

Representative Yates asked when this administrative regulation would become effective. Subcommittee staff responded that the administrative regulation would become effective either: (1) thirty (30) days from the date LRC refers the administrative regulation to the second Subcommittee for review; or (2) if the second Subcommittee meets to review the administrative regulation, upon adjournment of that meeting.

Personnel Board

101 KAR 1:335. Employee actions. Questions had been raised concerning: (1) format; (2) language; (3) terminology; (4) application to employees exempted from the classified service because of citation of KRS 18A.115, relating to exempt employees, in RELATES TO paragraph; (5) authority to prescribe forms; (6) meaning of "reasonable basis" for the determination to transfer involuntarily; (7) effective date of involuntary transfer; (8) payment of moving expenses of involuntarily transferred employee; (9) period within which an employee may appeal an involuntary transfer; and (10) the use of the word "demotion" with regard to inter-agency transfers.

In response to the notification of questions raised, Personnel Board staff stated that: (1) reimbursements for moving expenses related to an involuntary transfer were allowed, as provided by Finance Cabinet administrative regulations, and because the move was initiated and caused by agency action rather than employee choice; (2) the determination of "reasonable basis" would be an administrative decision based on the facts of the matter, and subject to appeal; and (3) inter-agency demotion referred to a voluntary transfer by an employee to another agency in a job that paid less or entailed less responsibilities.

This administrative regulation was amended to: (1) correct the citation of the statute to which the administrative regulation relates in the RELATES TO paragraph; (2) delete the reference to "department" in Section 3(1), and to provide that transfers shall comply with the provisions of this administrative regulation, because: (a) as used in this administrative regulation, the word "department" was vague, since it could be construed to mean a separate administrative body or agency, rather than a division of an agency; and, (b) it was not used

in the sense established by KRS Chapter 12, relating to the organization of the executive branch; (3) reword various sections and divide them into subsections and sections, pursuant to KRS 13A.220(4); and, (4) provide 30 day notification of an involuntary transfer to a workstation in another county.

Board of Veterinary Examiners

201 KAR 16:010. Code of ethical conduct. Senator Smith stated that Section 7, line 2, excluding as misconduct the sale of prescription medicine at a place where a veterinarian is treating a patient which is not his office, clinic, or hospital, if the medicine is used to treat the patient, was necessary. He added that previously, a veterinarian would have been restricted to sale or use at his office, clinic or hospital. Senator Smith stated that the owner of animals often save medication to treat other animals that subsequently may have the same medical problem. Agency personnel stated that an owner may treat his animals, and would not be considered practicing veterinary medicine or governed by the statutes or administrative regulations governing the practice of veterinary medicine. In response to a question by Senator Smith concerning the purchase and use of medicine offered for sale at a drugstore, agency personnel stated that this administrative regulation did not apply to such over the counter purchases.

Representative Kerr asked whether "patient" was defined by statute. Agency personnel stated that "patient" was used in the KRS Chapter 321, but he did not believe KRS Chapter 321 contained a statutory definition. Representative Kerr asked whether a veterinarian may tell the owner of an animal that the prescription given for one animal may be used for other animals that develop the same condition. Agency personnel stated that KRS Chapter 321 permits a veterinarian so to advise the owner and, on notification by the owner that another animal has developed the same condition as the original animal for whom the prescription was written, may supply additional medicine without returning to the owner's premises and examining that animal. Representative Kerr stated that the language limiting use of the prescription to the animal that the veterinarian is treating would appear to limit use of the medicine to that animal. Agency personnel stated that KRS Chapter 321 refers to herds or groups of animals and that if the veterinarian is familiar with the herd or group of animal, another visit to examine the second animal was not required. Representative Kerr asked whether the word, "patient" is meant to include the herd.

A question was raised concerning the necessity for Section 30, and the amendment thereto, permitting a veterinarian to refuse services to an owner of physically or verbally abused the veterinarian or his employee. Subcommittee staff and agency personnel stated that the statute: (1) did not specifically grant this right to a veterinarian; and, (2) granted authority to the Board to establish a code of conduct for veterinarians by administrative regulation. Agency personnel stated that this would enable the Board to resolve disputes relating to compliance by a veterinarian with standards of practice.

This administrative regulation was amended to: (1) comply with the format requirements of KRS 13A.220(4); (2) delete repetitious, vague, or redundant language; (3) rewording Section 12 to delete a definition and to make it clear that it established standards for the determination of "overutilization" of veterinary practice, as required by: (a) KRS 13A.222(4)(e) that restricts definitions in an administrative regulation to the first section of an adminstrative regulation, and (b) KRS 13A.222(4)(e)1.-2. that requires a definition to avoid repetition, and does not authorize definitions to contain standards or criteria that must be set out in other sections pertaining to those matters; (4) delete "but not limited to", to comply with KRS 13A.100(2) (interpretations, conditions or standards that implement statutes to be contained in administrative regulation), and KRS 13A.130 (prohibition of documents other than administrative regulation to implement statutory authority); (5) delete language that repeats or summarizes statutes, as required by KRS 13A.120(2)(e); (6) delete "animal" and insert "patient" in lieu thereof, to make the terminology consistent; and, (7) delete Section 39, relating to "conduct which reflects unfavorably on the profession", because: (a) it is vague, too broad, could include conduct that does not violate ethics or statutes; and, (b) the conduct intended to be prohibited already is prohibited by statute and this administrative regulation.

Board of Chiropractic Examiners

201 KAR 21:095. Licensure and registration of persons performing peer review. This administrative regulation was amended as follows: (1) Section 2(2), Lines 4 and 7 - The reference to "CCE accredited chiropractic college" was deleted and the following language was inserted: "chiropractic college accredited by the Council on Chiropractic Education"; and (2) The Regulatory Impact Analysis Statement, numbered sections (1)(a) and (b) and (4) were amended to adequately explain the impact of this administrative regulation.

Senator Huff asked why the amendments to Section 2(2), Lines 4 and 7 was necessary. Board counsel explained that the statute uses the term "Council on Chiropractic Education" and the amendment was necessary in order to avoid confusion.

Senator Smith stated that additional language should be added to require, or clearly indicate, that the six (6) hours annual continuing education includes ethics education and training for chiropractors. Board counsel stated that: (1) this administrative regulation refers only to annual education required for persons who wish to register to perform chiropractic peer review; (2) Other requirements for continuing education, established by KRS 312.175, are referenced in Section 2(3)(a); (3) this administrative regulation requires a minimum of sixty (60) hours of utilization review and six (6) hours of annual continuing education specifically in peer and utilization review; (4) those who do not wish to perform peer review only have to comply with the continuing education requirements of KRS 312.175. Board counsel explained that he did not whether the statutes required chiropractors to complete ethics courses.

On request of Senator Smith, Board counsel agreed to provide the Subcommittee with information concerning required continuing education in chiropractic ethics.

Chairman Kerr stated that: (1) there may be some problem with the reference to "unconscionable fees" in Section 1(4); (2) KRS Chapter 13A restricts a definitions section to definitions, and does not permit the insertion of substantive requirements; and (3) Subcommittee staff would work with Board counsel to remove inappropriate language from the definitions section.

Athletic Commission

201 KAR 27:008. Licensing requirements and fees. This administrative regulation was amended to delete Section 3(2). Section 3(2) provides that an applicant for an annual license shall file a $5,000 bond with the Commission "...for the payment of compensation to participants or taxes due and payable to the commission pursuant to KRS 229.031." KRS 229.051 provides that a permit to hold a professional boxing or wrestling match, or exhibition, shall not be granted until the applicant files "...a bond in the sum of five thousand dollars ($5,000)...conditioned for the payment of the tax imposed by KRS 229.031."

KRS 229.031(1) provides that a "...person conducting a professional boxing or wrestling match or exhibition" shall pay...a tax of five percent (5%) of the gross receipts from the sale of all tickets to the match or exhibition." KRS 229.031(2) provides that the shall also pay "...a tax of five percent (5%) of the gross receipts from all other sources, direct or indirect...from the sale, lease or other exploitation of broadcasting, television and motion picture rights of such contests."

The requirement in Section 3(2), requiring the bond to insure payment of compensation to participants, violates KRS 229.051 because it adds an unauthorized item (payment of compensation to participants), to the item specified in KRS 229.051, payment of the taxes imposed by KRS 229.031.

It also violates KRS 13A.120(2)(e) and KRS 13A.120(2)(i). KRS 13A.120(2)(e) prohibits the promulgation of an administrative regulation, if a statute prescribes the same or similar procedure for the subject matter of the administrative regulation. KRS 229.051 specifically states the purpose for the bond. KRS 13A.120(2)(i) prohibits the promulgation of an administrative regulation that modifies or vitiates a statute. Section 3(2) modifies KRS 229.051 by adding an unauthorized item (payment of compensation to participants), to the item specified in KRS 229.051 (payment of the taxes imposed by KRS 229.031).

In addition, the courts have consistently ruled that an administrative body "...cannot by the promulgation of a rule add to or take from the requirements of the statute it is administering...." (emphasis in original, deleted) Robertson v. Schein, 305 Ky. 528, 204 S.W.2d 954, 957-958 (1947).

The Commission has no authority to provide for a use of the bond required by KRS 229.031 that differs from, or is in addition to, the use specified in that statute. The bond may be used only for the payment of the tax imposed by KRS 229.031.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:048. Harvest seasons for upland game birds, furbearers and small game on specified wildlife management areas and refuges. Tom Young, representing the agency, appeared before the Subcommittee. On a motion by Senator Huff, with agency agreement, the Subcommittee amended Section 3(24) relating to the Realfoot National Wildlife Refuge, located in Fulton County. Section 3(24)(a) was amended to specify August 28 through September 30 as squirrel season. Section 3(24)(b) was amended to begin the raccoon season three weeks later than in the previous year. Raccoon season will now begin at Realfoot National Wildlife Refuge on the third Wednesday in October. This amendment is for the purpose of conforming to federal wildlife management area guidelines.

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game. With agency agreement, the Subcommittee voted to amend Section 2(7) (for clarification purposes only) to read as follows: "Red and gray fox and rabbits by persons hunting during daylight hours with dogs for sport and not to kill, year round open season," and delete the existing sentence.

Wildlife

301 KAR 4:001. Selection of fish and wildlife resources commission nominees. The proposed amendment to this regulation by the agency deletes the requirement that the nominee file an affidavit attesting to his registered political affiliation. Representative Allen asked for an explanation of why this was being done. Tom Young stated that there have been some problems encountered in the local areas concerning the requirement that the nominee sign an affidavit concerning his party affiliation. He stated that there has been no change in the method of selection, and the Commission felt that since the Governor makes the selection from the list of nominees, that this requirement of signing an affidavit is really something that the Commission does not need to be doing. The following amendments were agreed to by the agency and adopted by the Subcommittee: (1) Amend Section 3(5) on line 3 by deleting the word "manned" and inserting in lieu thereof: "overseen". (2) Amend Section 3(6) on line 3. by deleting the word "case", and in lieu thereof insert the word "cast". This is a simple typographical correction. (3) Amend Section 4(5) to delete everything following the word "unless" and inserting "overturned in court". This amendment removes language that restricted a reversal of the Commission's decision in court on appeal from "unless it is proved that the decision was procured or made by fraud, duress, malfeasance or illegal means" to indicate that the decision will stand unless judicially overturned.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Material incorporated by reference in this administrative regulation was amended as follows: (1) KSR 17-00-07, Page 9,C. to cite to the procedure for proper disposition of confiscated cigarettes pursuant to KRS 13A.222(4)(a); and (2) KSR 17-00-07, Page 10,1.b. to provide that release forms shall be kept at least 5 years

501 KAR 6:050. Luther Luckett Correctional Complex. Material incorporated by reference in this administrative regulation was amended as follows: (1) LLCC 08-01-01, page 3,1. to cite KRS Chapter 61 in the reference section pursuant to KRS 13A.220(3)(e); and (2) LLCC 08-05-01 to delete "must", "is", and "will" and insert "shall" pursuant to KRS 13A.222(4)(b).

501 KAR 6:110. Roederer Correctional Complex. Material incorporated by reference in this administrative regulation was amended as follows: (1) RCC 08-01-01 to cite KRS Chapter 227 in the reference section pursuant to KRS 13A.220(3)(e); (2) RCC 08-08-01 to cite 29 CFR 1910.120 in the reference section pursuant to KRS 13A.220(3)(e); (3) RCC 11-04-01 to delete "will" and replace with "shall" pursuant to KRS 13A.222(4)(b); (4) RCC 13-07-01, Page 4, G.1. to delete "will" and replace with "shall" pursuant to KRS 13A.222(4)(b); and (5) RCC 10-01-01, O. to delete "advise" and insert "advice".

RCC 17-05-05, page 3, g., requires that written orientation materials be translated into an inmate's language if the inmate does not speak or understand English. Cabinet personnel stated that this requirement is taken from the American Correctional Association guidelines.

In response to a question from Representative Yates, Cabinet personnel stated that there were no inmates currently in the correctional system who could not speak English. Senator Smith asked if there were any bilingual employees of the correctional system. Cabinet personnel stated that there was presently a Spanish speaking individual employed by the correctional system to assist in translation of orientation materials.

Department of Education: Office of School Administration and Finance: Pupil Transportation

702 KAR 5:010. Responsibilities of division. Section 3 of this administrative regulation was amended to comply with KRS 13A.222(4)(b), which requires a duty, obligation or prohibition to be expressed by "shall" or "shall not".

Bureau of Learning Results Services

703 KAR 4:050. Operational standards defining ratios for the major classifications of classified employees. The "RELATES TO" and "STATUTORY AUTHORITY" sections of this administrative regulation were amended to add statutory citations, and a typographical error was corrected in a statutory citation found in Section 4(2).

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:045. Tattoo studio sanitary procedures. This administrative regulation was amended to: (1) Clarify the title pursuant to KRS 13A.222(4)(a) by adding the phrase "Tattoo artist registration, tattoo studio certification and inspection" ; (2) Clarify the "Definitions" section pursuant to KRS 13A.222(4)(a) by adding definitions for "studio certificate of sanitation", "tattoo artist", "tattoo artist registration", "tattoo operator", "sanitary", and "sanitized"; (3) Clarify the definition of "sterilization" pursuant to KRS 13A.222(4)(a) by requiring autoclaving for "15 minutes" rather than "25 minutes"; (4) Require in Section 2 that each tattoo artist be registered ; (5) Require in Section 3 that each tattoo studio have a "certificate of sanitation" before operating; (6) Set out procedures for sanitary operation in Section 4; (7) Set out necessary facilities and equipment requirements in Section 5; (8) Provide for sanitary disposal of waste products in Section 6; (9) Provide for a $100.00 inspection fee in Section 7; (10) Provide for the payment of fees in Section 8; (11) Incorporate the Application for Registration DFS-200, Application for certificate of sanitation DFS-303, Inspection form DFS-343, and Tattoo record form DFS-343 by

reference in Section 9; (12) Provide an administrative procedure for revocation or suspension of a tattoo artist registration in Section 10; (13) State in the tiering statement that failure to apply the provisions of this administrative regulation to all regulated entities would violate 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, because all members of a regulated class must be treated equally; and (14) Amend the Regulatory Impact Analysis to estimate revenues at $8,000.00.

Senator Smith asked if this administrative regulation applied to tattoo artists that come into the state and set up on a temporary basis at places like flea markets or fairs. Agency personnel responded that the administrative regulation allows tattoo artists to operate for up to fourteen (14) days at fairs and carnivals if they become registered and meet all the requirements of permanent tattoo artists. If any temporary artist violates this administrative regulation corrective action must be taken within twenty-four (24) hours or the business will be shut down.

Senator Smith asked if there had been any sanitary problems with temporary tattoo artists. Cabinet personnel responded that they had received reports of artists operating in an unsanitary manner but these reports were unconfirmed. Senator Smith pointed out that this administrative regulation is more important now than it has ever been because of the AIDS epidemic.

Senator Smith stated that he has a problem with temporary facilities operating in this state because in permanent facilities the studio must have certain seats, stools and equipment while this is not a requirement for temporary facilities. Cabinet personnel responded that temporary facilities must meet all the requirements of permanent facilities. If temporary facilities cannot meet all the permanent facility requirements, the Cabinet will not register the artist or facilities. Cabinet personnel stated they would come back to the General Assembly for assistance if there was a problem with enforcement of the temporary registration provisions of this administrative regulation.

Senator Huff asked who was liable in the event that a registered artist causes injury. Cabinet personnel stated that this administrative regulation sets the standard for legal operation of a tattoo business in the state of Kentucky. The Cabinet feels its liability ends with ensuring that tattoo artists and studios comply with this administrative regulation. Cabinet personnel pointed out that something could go wrong even if the tattoo artist is in compliance with the administrative regulation and therefore responsibility rests primarily with the artist. Cabinet personnel stated they would not be liable if the tattoo artist improperly tattoos an individual or causes an infection. The Cabinet would be liable, however, if it acted negligently or failed or refused to enforce the administrative regulation.

Subcommittee staff pointed out that a federal cause of action under 42 USC 1983 does exist against state employees who act negligently or wrongfully under color of state law.

Representative Allen asked how many more employees would have to be hired to enforce this administrative regulation. Cabinet personnel stated that this administrative regulation would be enforced through the local health department and that no further personnel would be needed for enforcement. Representative Allen asked how the $20 registration fee would be distributed. Cabinet personnel responded that the money would be used to offset the additional record keeping requirement and the cost of forms. Cabinet personnel stated that the statute requires two (2) inspections per year and that the cabinet is charging a $100 inspection fee per year in addition to the $20 registration fee.

Representative Allen asked if the health department employees were paid per inspection. Cabinet personnel stated that the employees were paid a salary like any other state government employee.

Representative Allen asked why these fees should be charged when the employees are already in place and the employees have the time to do the work. Cabinet personnel stated that there are always costs associated with the time, record keeping and overhead.

Representative Allen asked why the Cabinet was only going to inspect the tattoo facilities twice a year. He pointed out that it was impossible to assure that these facilities would be operated properly with only two inspections per year. The Cabinet pointed out that it was doing its best to enforce a statutory mandate but that it could not be at each tattoo studio 24 hours a day.

Fallen Angel spoke in favor of this administrative regulation and stated that she: (1) owns and operates a tattoo studio in this state; (2) holds licenses in eight other states; (3) tattoos across the country; (4) has been on CNN and NBC Nightly News; (5) is a published tattoo artist; (6) believes there is a major problem with the legislation because it exempts cosmetic tattooing which is the most demanding form of tattooing and requires strictest sanitary procedures. Fallen Angel stated that cosmetic tattooing includes: (1) applying permanent makeup; (2) placing permanent pigment in the skin so that burns or scars are not so visible; or (3) tattooing a nipple on a woman who has had a mastectomy. She added that: (1) there have been cases of gangrene and hepatitis which have come from underground home tattoo operations; (2) it is difficult to find individual artists and enforce the provisions of this administrative regulation if the artist is operating out of his home; (3) this administrative regulation exempts those individuals who tattoo without receiving "remuneration"; and (4) this administrative regulation should not be the final step, and that existing statutes should be further amended to delete exemptions relating to cosmetic surgery and sanitary requirements.

Chairman Kerr also pointed out that the statute only applied to nonmedical personnel and a nurse or doctor could tattoo without having to comply with this administrative regulation.

Senator Smith pointed out that the: (1) bill originally filed in the General Assembly would have outlawed tattooing; (2) enacted bill allows tattooing to continue under strict sanitary guidelines; and (3) cosmetologists testified at hearings on the legislation that they were all already licensed and insured against malpractice. Senator Smith asked Cabinet personnel to determine the need for having the tattoo statute apply to cosmetic tattooing.

Representative Allen stated that: (1) individuals must be ultimately responsible for ensuring that their business is operated in a sanitary manner and in accordance with the provisions of this administrative regulation; and (2) the Cabinet cannot stay at a business twenty-four (24) hours a day to assure compliance with the law.

Fallen Angel stated that: (1) the problem with infection and disease rests with the artists who operate out of their homes, without proper sanitation; and (2) professional tattoo artists have done a very good job of policing themselves and they will continue to abide by the law.

Charles Wheeler (Tattoo Charlie) stated that: (1) the industry is very happy with the administrative regulation in its amended form; (2) the key to the business is the artist's pride in doing a good job; and (3) there is no way to eliminate the fly by night operator completely.

The Renegade stated that: (1) he is a temporary operator and has been doing business for thirty-five (35) years at carnivals and flea markets; (2) these administrative regulations are superior to regulations from other states; (3) the best way to assure compliance with sanitary requirements for temporary artists is to make them register with the state before they begin work. If an artist is not registered in Kentucky then he cannot work.

Cabinet personnel stated that they would, in all likelihood, ask the General Assembly to delete the exemption for those individuals involved in practicing cosmetic surgery.

Controlled Substance

902 KAR 55:040. Exempt over the counter preparations. (Not Amended After Hearing)

902 KAR 55:045. Exempt prescription preparations. (Not Amended After Hearing)

The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:110. Disclaimers.

Department for Military Affairs: Disaster and Emergency Services

106 KAR 1:075. Local disaster and emergency services organizational standards.

Real Estate Commission

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

Board of Hairdressers and Cosmetologists

201 KAR 12:105. School districts.

Board of Veterinary Examiners

201 KAR 16:015. Fees.

201 KAR 16:020. Approved veterinary colleges.

201 KAR 16:030. License, annual renewal notice. An objection had been raised to this administrative regulation on the grounds that: (1) it violated KRS 13A.221(1), requiring the promulgation of separated administrative regulations for each topic of a general subject matter; and (2) Section 3, which referred to continuing education requirements should be deleted and set out in 201 KAR 16:050, governing continuing education. Subcommittee staff stated that: (1) this administrative regulation related only to renewal of licenses; (2) the reference to continuing education was appropriate, because compliance with continuing education requirements was a condition for renewal of licenses.

The Subcommittee did not object to this administrative regulation.

201 KAR 16:040. Approval programs for veterinary technicians and veterinary technologists.

201 KAR 16:050. Continuing education.

201 KAR 16:060. Complaint processing procedures.

201 KAR 16:070. Hearing procedures

Athletic Commission

201 KAR 27:012. Wrestling requirements.

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:015. Boats and outboard motors; restrictions.

301 KAR 1:075. Gigging, grabbing or snagging, tickling and noodling.

301 KAR 1:200. Seasons and limits for angling.

Wildlife

301 KAR 4:061. Repeal of 301 KAR 4:060 Fishtrap Lake WMA restrictions.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers: Transportation of Solid Waste

601 KAR 40:020. Application for license to operate vehicles transporting municipal solid waste. Sandy Pullen, representing the agency, appeared before the Subcommittee. Senator Smith stated that he felt the definition of "municipal solid waste" had been expanded beyond the intent of Senate Bill 2. He said that the current definition includes petroleum contaminated soil. Ms. Pullen answered that the Natural Resources and Environmental Protection, Division of Solid Waste, defines that term and that the Transportation Cabinet enforces the program according to the definition for municipal solid waste set by the Natural Resources and Environmental Protection Cabinet.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:301. Adoption of 29 CFR Part 1910.7-.19.

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000-1910.1500.

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.63.

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:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:090. Permanent committees, registration and fees.

Board of Registration for Professional Engineers and Land Surveyors.

201 KAR 18:180. Firm registration.

201 KAR 18:190. Continuing education.

Division of Local Facilities: Jail Standards

501 KAR 3:010. Definitions.

501 KAR 3:030. Fiscal management.

501 KAR 3:040. Personnel.

501 KAR 3:050. Physical plant.

501 KAR 3:060. Security; control.

501 KAR 3:090. Medical services.

501 KAR 3:100. Food services.

501 KAR 3:120. Admission; release.

501 KAR 3:130. Inmate programs; services.

501 KAR 3:150. Hearings, procedures, disposition.

Ninety-Six Hour Local Confinement Facilities

501 KAR 4:010. Definitions.

501 KAR 4:040. Personnel.

501 KAR 4:050. Physical plant.

501 KAR 4:060. Security; control.

501 KAR 4:070. Safety; emergency procedures.

501 KAR 4:100. Food services.

501 KAR 4:120. Admission; release.

501 KAR 4:140. Inmates rights.

Twelve Hour Local Confinement Facilities

501 KAR 5:001. Repeal of KAR Chapter 5.

Restricted Custody Center

501 KAR 7:040. Personnel.

501 KAR 7:050. Physical plant.

501 KAR 7:060. Security; control.

501 KAR 7:120. Admission; release.

Direct Supervision for Full Service Jails

501 KAR 10:010. Definitions.

501 KAR 10:020. Administration; management.

501 KAR 10:030. Fiscal management.

501 KAR 10:040. Personnel.

501 KAR 10:050. Physical plant.

501 KAR 10:060. Security; control.

501 KAR 10:070. Safety; emergency procedures.

501 KAR 10:080. Sanitation; hygiene.

501 KAR 10:090. Medical services.

501 KAR 10:100. Food services.

501 KAR 10:110. Classification.

501 KAR 10:120. Admission; release.

501 KAR 10:130. Inmate programs; services.

501 KAR 10:140. Inmate rights.

Department of Education: Office of School Administration and Finance: Bureau of Learning Results Services

703 KAR 4:010. The formula for determining successful schools. Chairman Kerr requested that this administrative regulation be deferred so that Subcommittee members would have an opportunity to review a Department of Education document, "Creating Thresholds From Kentucky Instructional Results Information System Data, (December 2, 1992)" (KIRIS). Subcommittee staff explained that this

document was: (1) approved by the State Board for Elementary and Secondary Education; and (2) prepared as a internal Department working paper to provide information Board members needed to apply the formula used to determine whether a school was successful. Chairman Kerr asked if the complete formula had been incorporated by reference, or whether KIRIS contained material that was required to complete or implement the fomula.

Dr. Ed Reidy, Associate Commissioner in the Department of Education, Office of Assessment and Accountability Services,stated that KIRIS was: (1) simply a position paper used in the development of this administrative regulation; (2) prepared in June, 1992; (3) circulated and discussed with groups throughout the state, and, on two occasions, with the State Board. He added that the board adopted this administrative regulation after a third review of KIRIS.

Dr. Reidy stated that: (1) KIRIS was only used as a background document in the creation of this administrative regulation; (2) that this administrative regulation contains the material found in KIRIS with the exception of the last section. The last section of KIRIS governs what should be done if a school does not have an accountability grade, or if a school has two accountability grades. Dr. Reidy assured the Subcommittee that the Board is preparing an administrative regulation, which it hopes to promulgate in July, 1993, that will establish the procedures for distributing rewards and sanctions.

Chairman Kerr stated that, while it appeared the Department is developing a method for the determination for a "successful school", any formula used to make this determination, including the procedures and criteria explaining and implementing the fomula, must be contained in an administrative regulation. Dr. Reidy stated that the administrative regulation is, in essence, the formula and establishes the requirements of the formula in detail.

Subcommittee staff: (1) explained the fomula and stated that this administrative regulation contains the formula for determining successful schools; (2) stated that an understanding and application of the formula was not possible without reviewing KIRIS, especially the first five pages and the details of the calculations it contains. Subcommittee staff pointed out that KRS 13A.222(4)(a) requires an administrative body to use plain and unambiguous words that are easily understood by layman, and reiterated the requirement of KIRIS Chapter 13A that an administrative regulation contain all items implementing a statute. Subcommittee staff stated that, without the inclusion of KIRIS, educators and noneducators would not understand the formula or its calculation.

Subcommittee staff: (1) suggested that Subcommittee members consider whether all or portions of KIRIS should be incorporated by reference; and (2) stated that incorporation by reference would be required under the provisions of KRS 13A.120 and 13A.130 if KIRIS was needed or used to implement the provisions of this administrative regulation, because KRS 13A.130 prohibited the use of a document or other material that was not contained in an administrative regulation.

Kevin Noland, legal counsel for the Department, explained that the document simply has illustrations, but does not contain mandatory provisions. He stated that KIRIS interprets law and that the Department would be willing to defer the administrative regulation to develop an amendment to incorporate KIRIS by reference.

Dr. Reidy stated that: (1) the Department wanted to avoid the use of fancy statistical procedures, and develop a formula that would enable a school to determine its own index and goals with a calculator or, more simply, with pencil, paper and patience; (2) the Department had conducted regional meetings to explain each step of the fomula to educators in every school district; (3) these meetings were evaluated by educators; (4) the Department intended to continue these meetings in order to develop administrative regulations that will be recommended to the State Board; and (5) KIRIS will continue to be used as a background document in this procedure.

Dr. Reidy stated that the Department would agree to incorporate KIRIS by reference, even though it did not believe it is needed to implement this administrative regulation.

Chairman Kerr asked whether the Department believed an educator could look at this administrative regulation, and the formula it contains, and determine whether a school was a "successful school". Dr. Reidy stated that, while an educator can calculate the formula based upon this administrative regulation, KIRIS provides background and makes it easier for the educator to understand what is a difficult formula.

Senator Smith asked whether a national standard or formula is available for the assessment of a successful school. He stated that he was concerned about the national rating of a state's education programs, and the basis or statistics used to determine this rating. Senator Smith stated that a uniform national testing standards should be adopted by each state.

Dr. Reidy responded that Kentucky is part of a group of approximately 24 states that is involved in a project, "The New Standards Project", to develop a set of national standards that each state can adopt. Dr. Reidy added that Kentucky's tests are referenced to a federal program, the National Assessment for Educational Progress, in writing, reading and mathematics national tests; and that the Department is working toward a link between state standards, and national and international benchmarks.

Senator Smith requested information on national testing being conducted in Kentucky. Dr. Reidy stated that the results of testing conducted this year in writing, mathematics and science will be released by the federal program in April, 1993; and that Congress is considering or subjects, such as science, to be added for testing in 1993 and subsequent years.

Chairman Kerr asked whether the calculation of the "accountability index", which averages six (6) indices, (math, science, social studies, writing, reading and noncognitive data), includes a calculation of the educational goals relating to self sufficiency and adaptability. Dr. Reidy responded that it did, but that the administrative regulation did not incorporate these variables in the formula, because the Department has a five (5) year developmental effort to assess all seventy-five (75) valued outcomes. He stated that: (1) applicable statutes required an initial interim assessment program to be completed in each of the five content areas; (2) the Department has established the interim assessment program for the present biennium, and during 1992-1996 will develop the assessment to fully implement the program and measure all seventy-five of the valued outcomes by the statutory deadline, 1996.

Chairman Kerr stated that: (1) the House version of the legislation contained an amendment that would require eighty percent of the weight of tests be in the five content areas; (2) the Senate removed the amendment; (3) in testimony before the Education Committee, Commissioner Boysen assured legislators that the actual formula in determining a successful school would reflect an eighty percent weight in the five content subject matters. Chairman Kerr thought that this administrative regulation provided for the eighty percent weight.

Dr. Reidy stated that this administrative regulation will assess primarily the five basic content areas. Chairman Kerr stated that the statute requires the Department to assess all seventy-five of the valued outcomes. Dr. Reidy agreed and stated that: (1) other areas, such as arts and humanities, practical living, and vocational studies (workplace readiness skills), will be added over time; (2) the only remaining issue is how much weight will be given to each; and (3) there is a greater concern for "fairness in the formula" during the first five-year implementation period.

Subcommittee staff stated that: (1) an additional issue related to whether the Department is required by KRS 158.6455(2) to promulgate an administrative regulation defining "successful student"; (2) KRS 158.6455(2) required the Department to "...adopt by administrative regulation the formula to be used to determine successful schools", but does not include a mandatory directive requiring the Department to promulgate an administrative regulation defining "successful student"; (3) the LRC Office of Accountability and other

interested persons believed that the Department could not determine the formula for a successful school without first establishing a definition for a successful student.

While Department counsel indicated that the Department might consider promulgating an administrative regulation defining "successful student", he stated that KRS 158.6455(2) does not mandate that this definition be adopted by administrative regulation.

The Department agreed to Chairman Kerr's request that this administrative regulation be deferred until the April 1993 meeting. Deferral would permit Subcommittee members to review KIRIS.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:030. Simulcast facilities.

The Subcommittee adjourned at 1 p.m. until April 1, 1993 at 2 p.m. in Room 131 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Minutes of February 19, 1993

The Committee determined that the following regulations complied with KRS Chapter 13A:

Board of Accountancy:
201 KAR 1:063
201 KAR 1:130

Kentucky Racing Commission
810 KAR 1:025
811 KAR 1:180 (Amended by changing the RELATES TO line to "KRS 230.269(1), (3), 230.215, 230.290, 230.310"; changing the STATUTORY AUTHORITY line to "KRS 230.260".
811 KAR 2:020

The Committee adjounred at 2:38 p.m.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of February 17, 1993

The Interim Joint Committee on Health and Welfare met on Wednesday, February 17, 1993, and submits this report:

The Committee voted to approve the following administrative regulations as referred: 201 KAR 2:210, 201 KAR 20:070, 201 KAR 20:090, 201 KAR 20:095, 201 KAR 20:110, 201 KAR 20:225, 201 KAR 20:230, 201 KAR 20:250, 201 KAR 20:310, 902 KAR 14:010, 902 KAR 14:020, 902 KAR 20:330, 905 KAR 8:230, and 907 KAR 1:450.

There were no objections.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of March 2, 1993

The Interim Joint Committee on Transportation met on Tuesday, March 2, 1993 and submits this report:

The Committee determined that the following regulation complied with KRS Chapter 13A: 603 KAR 5:301, Weight classification of the state-maintained system of highways.

The Committee adjourned at 2:05 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of March 4, 1993

The Interim Joint Committee on Education met on March 4, 1993, and approved the following administrative regulations:

11 KAR 3:001 - Defines terms used in other regulations that apply to all authority insured student loan programs.

11 KAR 3:015 - Prescribes the eligibility of borrowers and students who benefit from authority insured student loans.

11 KAR 3:025 - This regulation prescribes eligible programs of study.

11 KAR 3:035 - Prescribes the eligibility of borrowers and students who would benefit from authority insured student loans.

11 KAR 3:045 - Prescribes the charges that participating lenders may impose on student loan borrowers.

11 KAR 3:055 - Prescribes procedures for obtaining student loans insured by KHEAA.

11 KAR 3:061 - Repeals 11 KAR 3:060 which incorporates by reference comprehensive federal regulations governing eligibility and assessment for student loan programs.

11 KAR 5:001 - Proposed amendments to 11 KAR 5:001 the definition section of Chapter 5, Title 11 of Kentucky Administrative Regulations.

11 KAR 5:140 - Deletes a section concerning the minimum KHEAA grant award that is inconsistent with the minimum CAP grant award provision in another regulation.

13 KAR 2:060 - Sets forth the terms for determining compliance with an institution's equal opportunity goal for African-American students and for granting of temporary waivers to the state-supported institutions of higher education which have not met their goals.

702 KAR 3:245 & E - Establishes a formula for determining the budget for schools which have adopted school-based decision making.

703 KAR 4:040 - Established the interim methods for verifying successful completion of the primary program.

704 KAR 10:050 - Establishes procedures for schools seeking approval of the Commissioner of Education for courses not listed in the Program of Studies for Kentucky schools K-2.

780 KAR 3:070 - Makes changes in compensatory time and annual leave used for Workforce Development Cabinet employees.

780 KAR 6:060 - Extends the maximum amount of compensatory leave that may be accumulated by unclassified staff from 100 hours to 200 hours.

781 KAR 1:020 - Prescribes general criteria for rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY
Meeting of March 9, 1993

The Interim Joint Committee on Labor and Industry met on Tuesday, March 9, 1993, and submits this report:

The Committee reviewed the following administrative regulations: 803 KAR 25:011, 803 KAR 25:012, 803 KAR 25:095 and 803 KAR 25:096.

803 KAR 25:096, Section 4(2), was amended at the request of the Workers' Compensation Board. The amendment extends the period of time from 30 to 60 days before some treatment plans are required. The amendment also deletes the terms "manipulations" and "adjustments" from the explanation of "passive modalities". Also the amendment deletes the requirement that a treatment plan contain a time frame for which treatment will continue and when it will end, and requires instead that the treatment plan contain the time frame in which treatment is proposed to continue.

The Committee approved a motion that it reviewed the adminis-

trative regulations and had no objections to them.

The Committee adjourned at 11:15 a.m. until the second Tuesday in April, 1993.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of March 10, 1993

This date, the Committee reviewed the following administrative regulations, referred by LRC February 10.

Department of Personnel - 101 KAR 2:066. The Committee found that this regulation complies with KRS Chapter 13A.

Kentucky Retirement Systems - 105 KAR 1:040. The Committee voted to attach a letter of objection to this regulation on the basis that: (1) Section 2 does not meet statutory authority, in that KRS 61.702 does not specifically authorize prefunding of the medical insurance benefits; (2) it violates KRS Chapter 13A, in that the regulatory impact analysis does not include any financial information specifically relevant to the contents of Section 2; and (3) the fiscal note requirement of KRS Chapter 13A has not been met, in that the financial impact of Section 2 on local governments and their contribution rates has not been adequately described in the fiscal note.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of March 12, 1993

The Interim Joint Committee on Business Organizations and Professions met on Friday, March 12, 1993, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A.

Board of Hairdressers and Cosmetologists - 201 KAR 12:105.
Board of Veterinary Examiners - 201 KAR 16:010, 201 KAR 16:015, 201 KAR 16:020, 201 KAR 16:030, 201 KAR 16:040, 201 KAR 16:050, 201 KAR 16:060, 201 KAR 16:070.
Kentucky Athletic Commission - 201 KAR 27:008.

The following regulations were deferred with approval of the promulgating agencies, until the next meeting of the Committee:

Real Estate Commission - 201 KAR 11:350.
Kentucky Athletic Commission - 201 KAR 11:350.

The Committee adjourned at 4:30 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates J2

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 J15

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 J26

The Subject Index is a general index of regulations published in VOLUME 19 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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201 KAR 18:040E	3310	4-27-92
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302 KAR 16:080E	3130	4-7-92
Replaced		8-27-92
804 KAR 9:040E	3313	4-24-92
Replaced		9-14-92

ORDINARY REGULATIONS:

201 KAR 10:050		
Amended	3497	(See VOLUME 19)
201 KAR 10:060		
Amended	3209	10-30-92
201 KAR 18:040		
Amended	3210	(See VOLUME 19)
201 KAR 18:075	3271	
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803 KAR 2:320		
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804 KAR 9:040		
Amended	3536	(See VOLUME 19)

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

1 KAR 6:020E	1048	9-18-92
Replaced	1524	1-4-93
11 KAR 4:020E	677	7-9-92
Replaced	921	12-9-92
13 KAR 2:060E	1517	12-10-92
Replaced	2024	3-4-93
32 KAR 1:010E	859	8-19-92
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32 KAR 2:020E	1048	10-6-92
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32 KAR 2:030E	1049	10-6-92
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32 KAR 2:040E	1050	10-6-92
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32 KAR 2:050E	1052	10-6-92
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32 KAR 2:060E	1052	10-6-92
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32 KAR 2:070E	1053	10-6-92
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32 KAR 2:080E	1054	10-6-92
Replaced	1529	1-4-93
101 KAR 1:325E	860	8-18-92
Replaced	961	12-9-92
200 KAR 6:045E	2001	1-26-93
200 KAR 14:011E	362	7-14-92
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200 KAR 14:081E	363	7-14-92
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201 KAR 2:210E	1726	1-5-93
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201 KAR 10:050E	4	5-18-92
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201 KAR 18:180E	1727	12-21-92
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201 KAR 22:135E	1299	11-2-92
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301 KAR 2:044E	864	8-18-92
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301 KAR 2:220E	1054	9-22-92
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401 KAR 49:009E	4	6-8-92
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401 KAR 50:037E	681	7-31-92
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405 KAR 7:001E	682	7-24-92
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405 KAR 7:091E	686	7-24-92
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405 KAR 7:092E	689	7-24-92
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405 KAR 12:020E	697	7-24-92
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415 KAR 1:050E	1299	11-9-92
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415 KAR 1:090E	1307	11-9-92
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415 KAR 1:120E	1309	11-9-92
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500 KAR 10:001E	1058	9-22-92
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500 KAR 10:010E	1059	9-22-92
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500 KAR 10:020E	1059	9-22-92
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500 KAR 10:030E	1060	9-22-92
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501 KAR 1:060E	1729	1-6-93
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501 KAR 2:020E	1310	11-10-92
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501 KAR 2:030E	1311	11-10-92
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501 KAR 2:040E	1311	11-10-92
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501 KAR 2:050E	1311	11-10-92
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Replaced	790	11-9-92
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Resubmitted	2001	1-21-93
501 KAR 6:060E	365	6-24-92
Replaced	501	10-8-92
502 KAR 45:005E	2003	2-9-93
502 KAR 45:015E	2003	2-9-93
502 KAR 45:025E	2004	2-9-93
502 KAR 45:035E	2005	2-9-93
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502 KAR 45:116E	2009	2-9-93
601 KAR 40:020E	366	7-13-92
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603 KAR 3:060E	368	7-8-92
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603 KAR 5:110E	369	7-15-92
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603 KAR 5:300E	372	7-13-92
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704 KAR 3:303E	7	6-12-92
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704 KAR 3:405E	1061	9-22-92
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704 KAR 3:440E	7	5-22-92
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780 KAR 3:020E	9	6-11-92
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901 KAR 5:050E	372	7-2-92
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902 KAR 10:021E	372	7-2-92
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902 KAR 10:035E	702	7-24-92
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902 KAR 20:004E	374	7-10-92
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902 KAR 20:320E	1313	10-16-92
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902 KAR 20:330E	1324	10-16-92
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902 KAR 45:110E	378	6-30-92
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902 KAR 100:012E	10	6-4-92
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902 KAR 105:020E	10	6-4-92
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